

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUSTAVO AGUILAR
Plaintiff

V.

ALLIANCE RESIDENTIAL,
LLC
Defendant

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Case No. 4:16-cv-00118

ORAL DEPOSITION

OF

JASON T. ENGLISH, M.S., CSP, P.E.

FEBRUARY 3, 2017

VOLUME 1 OF 1

Oral deposition of Jason T. English, M.S., CSP, P.E., produced as a witness at the instance of the defendant, and duly sworn, was taken in the above-styled and numbered cause on the 3rd day of February, 2017, from 10:15 a.m. to 2:13 p.m., before Camille A. Bruess, CSR, RPR, in and for the State of Texas, reported by stenographic method, at the Daspit Law Firm located at The Lyric Centre, 440 Louisiana Street, Suite 1400, Houston, Harris County, Texas 77002, pursuant to notice and in accordance with the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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1	Report dated 12/1/16 from Mr. English addressed to Mr. McAlpine in letter form summarizing his findings on the analysis of an injury event (6 pgs.)	6	
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STIPULATIONS

THE REPORTER: Today's date is February 3rd, 2017 and the time is 10:15 a.m. My name is Camille Bruess of Magna Legal Services and I will be taking the Oral Deposition of Jason English pursuant to the Federal Rules of Civil Procedure at the Dasplit Law Firm located at The Lyric Centre, 440 Louisiana Street, Suite 1400, Houston, Harris County, Texas 77002. The style of the case is: In the United States District Court for the Southern District of Texas, Houston Division, Case No. 4:16-cv-00118, Gustavo Aguilar versus Alliance Residential, LLC.

Would counsel present please identify themselves and who they are representing?

MR. McALPINE: Kiernan McAlpine, attorney for the plaintiff, Gustavo Aguilar.

MR. HASSINGER: And Tim Hassinger for Alliance Residential.

THE REPORTER: Are there any stipulations counsel would like to make at this time?

MR. McALPINE: Yes. We are going to stipulate to reserving objections except as to form, responsiveness, and leading until trial and same basis -- and reserve stating the basis until called upon to provide the basis by opposing counsel.

MR. HASSINGER: You said we're --

MR. McALPINE: Let me try to not do shorthand. The parties agree to waive the contemporaneousness requirement for objections under Rule 30(c)(2). The parties agree to reserve all objections except as to the form of a question, responsiveness, and leading until the time of trial. Parties may further agree to reserve -- parties do further agree to reserve stating the basis for objections until the time of trial unless called upon by opposing counsel to state the basis for a particular objection. Plaintiff agrees.

MR. HASSINGER: That's fine.

JASON T. ENGLISH, M.S., CSP, P.E.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. HASSINGER:

Q. Can you tell us your name and address for the record, please?

A. Yes. Jason English. Address is 543 William D. Fitch Parkway, Suite 112, College Station, Texas 77845.

Q. Mr. English, you've been deposed before.

A. Yes.

Q. Okay. You know all the ground rules?

A. Yes.

Q. Just as a reminder, if you could let me finish

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1 my question for the court reporter's benefit, I'll extend
2 you the same courtesy of letting you finish your answer
3 before I move on to the next question. Okay?

4 A. Yes.

5 Q. You were hired by the plaintiff in this case; is
6 that right?

7 A. Plaintiff's counsel, yes.

8 Q. Plaintiff's counsel. You've never spoken to the
9 plaintiff, Mr. Aguilar, have you?

10 A. No, I've not personally spoken with him.

11 Q. You've never read his deposition testimony in
12 this case?

13 A. I have, yes.

14 Q. You didn't read his deposition before you issued
15 your report in this case, true?

16 A. That is true. That's correct.

17 Q. What we received in discovery is or in the
18 course of this case an expert report from you. I want to
19 show it to you and confirm that this is the report that
20 you issued, if you wouldn't mind.

21 A. Yes, this is my report minus the, uh -- it
22 doesn't have the attached appendix, but that's the report
23 portion.

24 Q. I'm going to attach this as Exhibit 1.

25 (Whereupon, Exhibit No. 1 was marked.)

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1 Q. And then we also received your CV that has with
2 it a list of publications, deposition, and trials list
3 for the past four years. I'm going to show you this, if
4 you wouldn't mind.

5 MR. McALPINE: May I?

6 THE WITNESS: (Witness complies.)

7 MR. McALPINE: All right.

8 A. Yes, these are items that would have been
9 included as part of the Appendix A to my report.

10 Q. I'm going to attach this as Exhibit 2.

11 (Whereupon, Exhibit No. 2 was marked.)

12 Q. We also had issued a subpoena for your file and
13 you provided us a response to that subpoena, did you not?

14 A. I did, yes.

15 Q. The file materials that we received in response
16 to our subpoena are about half of an inch thick and I'm
17 looking at what may be five to ten times that in front of
18 you today. Why do you have so much more than I have?

19 MR. McALPINE: Object to the form.

20 A. Uh, well, 'cause I didn't supply all the
21 materials that I had received. I referenced my
22 documented lists that were in, uh, my report, Appendix A
23 that I had and then also in the cover letters that were
24 supplied that listed out a listing of the documents since
25 those were documents that -- discovery documents or

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1 things produced in the case that my assumption was that
2 both parties already had in their possession, so I didn't
3 produce a second copy of them.

4 Q. So, whatever you listed as the documents that
5 you reviewed, you have in front of you today.

6 A. Yes.

7 Q. And the reason it may be thicker than what I
8 have as far as your subpoena response is because you
9 didn't supply a second copy of our discovery responses.

10 A. That's correct.

11 MR. McALPINE: May I make a brief remark off
12 the record?

13 MR. HASSINGER: Sure.

14 (Discussion off the record)

15 Q. We had a discussion off the record, but let me
16 show you what is Appendix A which includes data and other
17 information considered in forming your opinions, exhibits
18 that will be used to summarize and support opinions,
19 which are actually listed on the first page of what's
20 within Exhibit A. Yes?

21 A. Yes, as far as references which I may have
22 obtained exhibit information from.

23 Q. Appendix A also includes your CV that we've
24 attached as Exhibit 2.

25 A. Yes.

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1 Q. And that it includes a fee schedule as part of
2 that packet that's known as Exhibit A.

3 A. Correct. And it also is part of the appendix,
4 that depo and trial list that you have as part of the
5 next two -- I mean Exhibit 2, I'm sorry.

6 Q. Okay. 'Cause that goes with your CV. Yes?

7 A. Yes.

8 Q. Okay. So, let's attach Appendix A that we've
9 now referenced as Exhibit 3.

10 (Whereupon, Exhibit No. 3 was marked.)

11 Q. So, we have Exhibit 1, your report, Exhibit 2,
12 your CV, which is actually within part of -- within
13 Appendix A, and then we've got Appendix A as Exhibit 3.
14 Just so we have them all there. Is that right?

15 A. Yes.

16 Q. You also issued an invoice in connection with
17 the work that you did in this case, true?

18 A. Yes.

19 Q. Is this the invoice that you issued
20 (indicating)?

21 A. Yes.

22 Q. And this invoice reflects the work that you
23 actually did before you issued your report that we've
24 attached as Exhibit 1.

25 A. Yes, that up through my report, yes, including

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1 my report.
 2 Q. If we could attach the invoice as Exhibit --
 3 mark it as Exhibit 4.
 4 (Whereupon, Exhibit No. 4 was marked.)
 5 MR. McALPINE: Thank you, sir. Yeah.
 6 Q. You're being offered as an expert in this case
 7 in what areas?
 8 A. Well, I can tell you my areas of specialty. I
 9 don't -- I did not --
 10 Q. That's not my question.
 11 A. Well ...
 12 Q. The question is, what are you being offered as
 13 an expert in as far as this case is concerned?
 14 A. Well, I'm not the one that prepared the
 15 designation. I can tell you my areas of expertise that
 16 I'm offering myself in.
 17 Q. Okay. Tell me what you think you're an expert
 18 in in connection with this case.
 19 A. I would say generally the field of safety
 20 engineering, and within that general subheading includes
 21 safety management, fall prevention, the walking surface
 22 safety including accessibility and design.
 23 Q. Anything else?
 24 A. There's a lot of subheadings. Premises safety
 25 would fall under there. I mean these are all under the

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1 general heading of safety engineering - human factors,
 2 ergonomics, code administration. I think those are the
 3 high points I would say.
 4 Q. So, you're an expert in eight different areas:
 5 safety engineering, safety management, fall prevention,
 6 walking surface safety, accessibility design, premises
 7 safety, human factors/ergonomics, and code
 8 administration; is that right?
 9 MR. McALPINE: Object to form.
 10 A. Those are the -- those are the areas that I'm
 11 applying in this particular evaluation. I have expertise
 12 beyond that, but that's what I would consider most
 13 relevant to this particular evaluation.
 14 Q. How long have you been acting as an expert
 15 witness?
 16 A. I've been offering services in that area for
 17 around maybe 12 years or more, somewhere in there.
 18 Q. If I had a case where a, uh, patron was walking
 19 into a grocery store and slipped and fell on water, you
 20 could be an expert for me or a lawyer in connection with
 21 that case?
 22 A. I have expertise to evaluate that, yes.
 23 Q. If I have a case where a, uh -- or if a lawyer
 24 has a case where there's a handrail issue in connection
 25 with entering an office building, you could be an expert

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1 in that?
 2 A. That's within my area of expertise, yes.
 3 Q. And if I had a case where someone's using a
 4 ladder at a parade and a child falls from the ladder, you
 5 could be an expert in that as well?
 6 A. I would probably have to know more about the
 7 case. I do have expertise in ladders, but as far as a
 8 parade and children and how it was being utilized, I
 9 would probably need more information to make that
 10 determination.
 11 Q. If I had a -- if there was a worker who was
 12 using scaffolding in connection with construction or
 13 renovations to an office building and fell because of
 14 some defect with respect to the scaffolding, do you have
 15 expertise in that area?
 16 A. It depends on the defect, but I do have
 17 expertise in scaffolding, not all areas. So, it would
 18 depend on the specific areas that were involved.
 19 Q. You've been retained as an expert in connection
 20 with offshore cases, too?
 21 A. Occasionally, yes.
 22 Q. So, if I have a rig worker who's on an offshore
 23 platform and slips and falls on a rig -- slips and falls
 24 on the rig floor, you would have expertise in that?
 25 A. Yes, I would have expertise to evaluate that.

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1 Q. And if we have a, uh, a welder who's welding a
 2 piece of equipment on a land based oil field or well site
 3 and is injured in some fashion, you'd have expertise in
 4 that type of case, too?
 5 MR. McALPINE: Object to the form.
 6 A. Certain areas, possibly, not all. As far as
 7 workplace safety, yes. As far as some of the specifics
 8 of welding, possibly not. It depends on the
 9 circumstances.
 10 Q. So, tell me some cases that you've been retained
 11 as an expert in. You want me to go through the list,
 12 this four-year list?
 13 A. I'm here to answer your questions. So, however
 14 you feel it's best to.
 15 Q. Ernest Myers, Representative of the Estate of
 16 Sherrie Myers, Deceased -- Ernest Myers, et al. vs. AFS
 17 Northwest Business Park, what was that case about?
 18 A. That was a -- a fall, a trip and fall at a
 19 business strip center.
 20 Q. And who were you retained by?
 21 A. The plaintiff's counsel.
 22 Q. Martha Rubio versus HEB Grocery Company, what
 23 was the subject matter of that case?
 24 A. From recollection it was a workplace injury at a
 25 grocery store involving a falling object falling and

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1 landing on her head I believe.

2 Q. And you were retained to offer expertise in
3 connection with what issue?

4 A. Uh, the material storage, the type of racking
5 systems that were -- that's part of that storage, also
6 workplace safety and also the issues of falling objects.

7 Q. Who were you retained by in that case?

8 A. Plaintiff's counsel.

9 Q. On this list that's the list of Deposition and
10 Trials List for the past four years that's part of
11 Exhibit 2, there are two and a half pages or so of cases.
12 Have you been retained by the plaintiff in every one of
13 those cases?

14 A. Uh, likely not. I don't know. I'd have to take
15 a closer look at it. And some of these are up to four
16 years old, so I may not remember on all of them.

17 Q. Sarah Thomas vs. Regency Crossing, third case on
18 the list, what was the subject of that case?

19 A. Uh, sitting here, I don't recall the specifics
20 of that case.

21 Q. Who were you retained by?

22 A. That case is not coming to mind. So, I don't
23 recall on that one.

24 Q. Next one, Yen Nguyen vs. Tien Quang Bui,
25 T-i-e-n, Q-u-a-n-g, B-u-i, who were you retained by?

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1 A. I believe on that one it was plaintiff's
2 counsel.

3 Q. And what was the issue in that case?

4 A. It was a fall down a residential stairway.

5 Q. Can you just look at these two and a half pages
6 (indicating) and tell me were any of these cases -- in
7 any of these cases that you have listed were you retained
8 by the defendant?

9 A. (Witness reading.) In answer to your question,
10 it would be yes.

11 Q. And which ones?

12 A. There's one on page two. It's Sandra Stewart
13 vs. Michael's Stores. And when I got to that one, I
14 stopped. The ones that I recognize, some of these like
15 the one we spoke of earlier I don't quite have a
16 recollection of the details or who I was working for
17 based on the names, but I can continue down the list so
18 that way if I come to some, do you want me just to name
19 those?

20 Q. Yes, if you wouldn't mind.

21 A. Okay. There's a Vicky Wright vs. D&B Patels.
22 (Witness reading.) I have one that's a little different
23 where I was retained by a plaintiff and one of the
24 defendants. It's the Diane Tomlinson vs. Safeway vs.
25 Stonebriar Hotel. (Witness reading.) Those are the ones

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1 that I recognize.

2 Q. I counted the cases and there's a total of 76
3 cases on your list for the last four years. Does that
4 sound right?

5 A. I have not counted them. So, if you counted
6 them, then I'll trust your number.

7 Q. Okay. And you have 2 of the 76 where you were
8 retained by the defendant?

9 MR. McALPINE: Object to the form.

10 A. I did not count the ones that I read off. I
11 thought there was three or four, but I didn't -- I wasn't
12 counting. Do you want me to go back through it again?

13 Q. Yeah. You said -- you listed two and then you
14 said there was one where it was a plaintiff and a
15 defendant. So, it's either two or three.

16 A. I don't know. Again, I really wasn't paying
17 attention to that. So, I mean if you were, then that's
18 fine.

19 Q. Sandra Stewart case, that was one, right?

20 A. Yes.

21 Q. And then the next one was -- that was the first
22 one that you noticed. And then what was the second one?

23 A. (Witness reading.) The Vicky Wright vs. D&B
24 Patel.

25 Q. Was that just for the defendant or for plaintiff

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1 and defendant?

2 A. That's just the defendant.

3 Q. Okay. So, that's two.

4 A. Then, yeah, I guess you're right, and then the
5 one that Tomlinson vs. Stonebriar that I was retained by
6 one defendant and the plaintiff as well.

7 Q. Okay. So, out of 76 cases, 2 to 3 of those were
8 for a defendant in some capacity.

9 A. As far as the ones that I've recognized, one and
10 then also two that I've -- the cases which I've evaluated
11 where I've actually gone far enough to provide testimony,
12 then that's correct.

13 Q. So, in the last four years where you've given a
14 deposition or trial testimony, if you do the math it's 96
15 to 97 percent on behalf of the plaintiff.

16 MR. McALPINE: Object to the form.

17 A. Of the ones I've recognized in there, that's
18 correct. It's the number that we have here.

19 Q. Tell me a case on that list, the two and a half
20 pages, where you offered expertise in any fashion in
21 connection with the Americans with Disabilities Act.

22 A. Ernest Myers vs. the AFS Business Park. Alice
23 Rohr vs. A.V.L. Naomi Woosley vs. Golden Royal d/b/a
24 Best Western. (Witness reading.) Vicky Wright vs. D&B
25 Patel. (Witness reading.) George Caballero vs. Denny's.

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1 Robert -- Dr. Robert Brace vs. The City of McAllen.
 2 Those are the ones that I recognize.
 3 Q. I counted six as you were naming them.
 4 A. I'll go with that. I wasn't counting them and
 5 you counted them right last time. So ...
 6 Q. Did any of the six involve ADA issues in
 7 connection with a parking lot?
 8 A. (Laughs) I wasn't -- I wasn't paying attention
 9 to what they were about as a just --
 10 Q. Myers case?
 11 A. Uh, it was a transition from a parking lot to a
 12 walkway. So, I guess kind of, sort of.
 13 Q. It's not a parking space issue.
 14 A. That's correct, not a parking space.
 15 Q. The Rohr case, the second one you named?
 16 A. And your question is, is it having to do with a
 17 parking space?
 18 Q. Yes.
 19 A. No, it was not a parking space.
 20 Q. Woosley?
 21 A. No, that was not dealing with a parking space.
 22 Q. Wright?
 23 A. That was not dealing with a parking space.
 24 Q. Caballero?
 25 A. That one was dealing with a parking space, yes.

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1 Q. What was the issue?
 2 A. Uh, it was a drainage issue for their roof. A
 3 condensate drain for their HVAC was draining right down
 4 the striping of the -- of the, uh, ADA parking space and
 5 creating a mildew -- or mold buildup that was slippery
 6 and the individual, as they were getting out of their car
 7 in the handicapped parking space, slipped as soon as they
 8 stepped down out of their car.
 9 Q. Where was the location of that incident?
 10 A. Uh, it was here in the Houston area. It seems
 11 like it was on 1960 area between --
 12 Q. Better question if you don't mind?
 13 A. Okay.
 14 Q. Was it a shopping center, a residential area, an
 15 apartment complex, what?
 16 A. You mean Caballero?
 17 Q. Yes.
 18 A. It was a restaurant.
 19 Q. A restaurant.
 20 A. Yes.
 21 Q. A parking lot in front of a restaurant?
 22 A. Serving the restaurant, yes.
 23 Q. And then the last one case that you mentioned,
 24 was it Brace?
 25 A. Yes, that's one of them.

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1 Q. What -- did that involve a parking space or a
 2 parking lot?
 3 A. No.
 4 Q. Have you ever testified as an expert witness in
 5 connection with ADA issues or Texas Accessibility
 6 Standards issues in connection with a parking space at an
 7 apartment complex before this case?
 8 A. Yes.
 9 Q. What case?
 10 A. On one of these had testified?
 11 Q. Yes.
 12 A. I don't recall if I've provided testimony or
 13 not, nothing that I recognize at least in the past four
 14 years.
 15 Q. Okay. What case are you thinking of?
 16 A. Uh, well, the one case that popped in my head
 17 was in -- where was it at -- I think Corpus Christi, an
 18 apartment complex that was involving accessible parking
 19 at a -- at an apartment complex.
 20 Q. What was the issue in that case?
 21 A. There was a fall of an individual trying to get
 22 to and from one of the apartment units.
 23 Q. How did he fall or she fall?
 24 A. Well, they didn't have any accessible parking on
 25 that entire side of the complex and they were

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1 attempting -- and the way they had it configured, instead
 2 of it being even a normal curb, it was actually kind of
 3 two steps and they fell trying to get -- I can't remember
 4 if it was going -- I think it was coming -- I can't
 5 remember if it was coming and going to or coming back,
 6 but they fell trying to get either from their car or to
 7 their car. I can't remember which.
 8 Q. And how did that person fall?
 9 A. While they were attempting to either go up or
 10 down the curb or the two steps leading from the parking
 11 lot to the sidewalk that then goes to the apartment unit.
 12 Q. What's the name of that case?
 13 A. I don't recall off the top of my head.
 14 Q. And what was your opinion essentially in that
 15 case concerning that incident?
 16 A. Well, I don't remember all the details, but I
 17 know one of it was a lack of adequate handicapped parking
 18 to serve the tenants and the, uh, visitors for the
 19 complex was I think one of the primary issues.
 20 Q. The lack of, I'm sorry?
 21 A. Accessible parking.
 22 Q. Because they didn't have any, right?
 23 A. At least on that entire side of the complex,
 24 that is correct. They did have a spot at the leasing
 25 office which was at the opposite side of the property and

Page 22

1 they may have -- I was trying to remember -- I think they
2 maybe had another one that was on a different
3 (indicating) side of the complex.

4 Q. Have you ever offered an expert opinion that a
5 business didn't do something wrong?

6 A. Yes.

7 Q. When was the last time?

8 A. I don't have an answer for that. I mean I
9 don't -- my memory's not quite that good as far as giving
10 you a specific time that I offered testimony.

11 Q. Can you tell me the case?

12 A. As far as you're saying where I actually
13 testified?

14 Q. Do it either way. When's the last time you
15 offered an opinion in any fashion, an expert opinion that
16 a business owner did not do something wrong?

17 A. Probably within the last week.

18 Q. What case was that?

19 A. It was a case which -- I'm trying to evaluate
20 how much information I can give out. It was the initial
21 evaluation of a case that somebody had contacted me about
22 to ask if I could assist. And essentially my answer was
23 no, but I don't feel at liberty to give any details about
24 the case since I'm not involved and it's a, uh, client of
25 mine.

Page 23

1 Q. Okay. Let's just talk about cases where you
2 were actually retained as an expert and offered actual
3 expert opinions in the form of a report or testimony.
4 So, can you tell me the last time you offered an expert
5 opinion either in report form or via testimony that a
6 business owner did not do something wrong?

7 A. As far as a report form, I don't know the exact
8 date, but I'd say within the last two or three months.
9 As far as testimony, it would have been one of the ones
10 likely that was on this list since that list the cases in
11 which I've testified in the last four years. So, I guess
12 that would have been the Tomlinson vs. Safeway, which was
13 in March of last year.

14 Q. And the one you were retained recently in, what
15 does that involve?

16 A. It was a fall on a stairway.

17 Q. And what's the issue?

18 A. I was evaluating the stairway retained by the
19 defendants that owned the premises or owned or operated
20 the premises to evaluate the stairway and I did not find
21 anything wrong with it relative to the incident that
22 occurred.

23 Q. The one ADA case that you mentioned involving
24 the apartment complex --

25 A. Yes.

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1 Q. -- how many years ago was that?

2 A. Well, I'm not very good at estimating time, but
3 I would say probably within the last two or three years,
4 somewhere in there.

5 Q. Is that on your list?

6 A. I did not recognize it, but I in the same sense
7 as I sit here, I can't even remember what the names of
8 the parties were. I just remember going and looking at
9 the apartment complex.

10 Q. Is that the only other case where you've offered
11 expert opinion in report form or testimony concerning ADA
12 issues with respect to an apartment complex, and more
13 specifically parking spaces at the apartment complex?

14 A. You said in written form or testimony?

15 Q. Yes, sir.

16 A. As I sit here, I don't recall. I know I've had
17 other evaluations, but whether I issued a report or
18 provided testimony, I don't recall.

19 Q. And how many cases have you been retained as an
20 expert by the Daspit Law Firm or one of its lawyers?

21 A. At least from recollection I believe this is the
22 first.

23 Q. You're not an architect?

24 A. No.

25 Q. You don't consider yourself an expert in the

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1 Americans with Disabilities Act, do you?

2 A. I do, yes.

3 Q. Okay. That wasn't on the list of the eight
4 things you mentioned at the beginning.

5 A. I think I -- well, it falls under several of
6 those headings. I think one of those was accessibility
7 design. That would include the ADA, TAS, and ANSI A117.1
8 with a host of other authoritative references on the
9 subject matter.

10 Q. And you consider yourself an expert in the Texas
11 Accessibility Standards as well?

12 A. Relative to certain areas, yes.

13 Q. Where have you studied or received training in
14 the Americans with Disabilities Act?

15 A. As far as my course work for not only safety
16 engineering but also I took a post graduate course from
17 the Department of Architecture at Texas A&M relative to
18 these issues, not only including accessibility and design
19 but also other things as far as just normal building code
20 compliance relative to walking, all means of egress which
21 includes stairways, ramps, level surfaces, any type of
22 walking surface.

23 Q. When's the last time you've had any type of
24 training in the ADA?

25 A. You mean as far as attending like a seminar or a

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1 course or something?

2 Q. Yes.

3 A. I haven't updated my CV in a while, but just
4 looking at that, the first one listed is in 2014,
5 "Prevention Through Design - Slips, Trips, and Falls"
6 from the American Society of Safety Engineers. I think
7 there's been another seminar I went to since then as
8 well, but I don't have it listed on my CV. And then it
9 looks like that course I was speaking of was from 2001.

10 Q. When I hear someone say they're an expert in the
11 Americans with Disabilities Act, that means to me that
12 they know when the ADA applies. Would you agree with
13 that?

14 A. Yes.

15 Q. And the same thing with respect to the Texas
16 Accessibility Standards, when I hear someone say that
17 they're an expert in that, then the expert should know
18 when those standards apply, true?

19 A. Yes.

20 Q. You've never designed a parking lot, have you?

21 A. You mean as from all aspects?

22 Q. Any aspect.

23 A. Uh, from the ground up, no. I've evaluated
24 designs, but, no, I've not done the actual ground up
25 design, no.

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1 Q. In connection with this case, the Aguilar case,
2 you didn't conduct any testing, did you?

3 A. There wasn't any required outside of taking
4 measurements.

5 Q. Okay. You didn't perform any testing?

6 A. That's true because none was required.

7 Q. You didn't perform any calculations, did you?

8 MR. McALPINE: Object to the form.

9 A. Well, other than adding and subtracting
10 dimensions, I would say no, none. No calculations were
11 required other than simple addition and subtraction.

12 Q. Before you issued your report in this case, you
13 had no idea what Mr. Aguilar testified to, did you?

14 A. Prior to issuing my report, is that what you're
15 asking?

16 Q. Yes.

17 A. Only through the information supplied through
18 discovery which included the incident report and then a
19 written statement which I now understand to be prepared
20 by his daughter and then signed by Mr. Aguilar.

21 Q. My question was before you issued your report,
22 you had no idea what Mr. Aguilar testified to, did you?

23 A. Well, at that time I thought the information had
24 come from him. So, I would say yes. But are you talking
25 about through his deposition?

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1 Q. You know what testimony is?

2 A. Somebody relaying some information verbally.

3 Q. Okay. If you need me to be more specific,
4 before you issued your report in this case, you had no
5 idea what Mr. Aguilar's testimony under oath was, did
6 you?

7 A. Well, that's a different question. Under oath,
8 no.

9 Q. Do you know the difference between testimony and
10 a statement?

11 A. Apparently I don't -- I'm not coherent or we're
12 not on the same page as far as your use of the terms.
13 Testimony in my mind can mean anybody relaying something
14 verbally. It doesn't necessarily have to be under oath.
15 So, I would consider it possibly being the same, falling
16 under the same category, but ... So, if you want to
17 clarify your definitions, then I may be able to answer
18 that.

19 Q. Who gave you permission to actually perform any
20 type of inspection at the Broadstone New Territory
21 Apartment complex?

22 A. That was arranged by Mr. McAlpine.

23 Q. My question was who gave you permission to
24 actually enter the premises and conduct any form of
25 inspection of the apartment complex?

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1 A. I met Mr. McAlpine at the site. So, that was
2 arranged by him. I was just told to be there.

3 Q. So, you actually met the attorney for
4 Mr. Aguilar at the apartment complex to inspect it?

5 A. Yes.

6 Q. How did you enter the apartment complex?

7 A. Just through their gate.

8 Q. Through their gate?

9 A. Yes.

10 Q. Did they have someone at the gate?

11 A. No.

12 Q. You just drove in?

13 A. Yes.

14 Q. Did you ever advise Mr. McAlpine or anyone else
15 that if you were going to do any form of inspection, that
16 counsel for Alliance Residential should be notified so
17 there could be a joint inspection?

18 A. I'm not an attorney on this case. That's not
19 part of the scope of my work is arranging between legal
20 counsel any part of this case. So, no.

21 Q. You've never done a joint inspection with other
22 experts?

23 A. Have I? Yes.

24 Q. Okay. That's a common theme, is it not?

25 A. I would say only a small fraction. Maybe ten

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1 percent of the cases have both -- more than one expert at
2 a site inspection that I'm involved with.

3 Q. Have you ever been on a case before this one
4 where you actually entered property through a gate to
5 inspect the property without the attorney or
6 representative for the property owner being present?

7 A. Yes.

8 Q. Did you have permission in those other cases?

9 A. I was not the one arranging the inspection. So,
10 I -- again, that's not part of my job is -- I arrange it
11 with my client and as far as how they do things legally,
12 that's not my responsibility.

13 Q. Was Mr. Aguilar present when you were performing
14 your inspection?

15 A. No.

16 Q. How do you know where he allegedly fell?

17 A. Uh, Mr. McAlpine informed me of that
18 information.

19 Q. The lawyer told you?

20 A. At that time, yes.

21 Q. You're saying at that time. At that time before
22 you issued your report, you hadn't -- you'd never spoken
23 to anybody else besides the lawyer, right?

24 A. That's correct.

25 Q. You'd never spoken to a human being in this case

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1 in connection with any of your opinions in this case
2 besides Mr. McAlpine, the lawyer, right?

3 A. That's true, yes.

4 Q. And if we look at your invoice that's attached
5 as Exhibit 4, you have .3 hours which is 18 minutes with
6 an initial phone consultation and reviewing photos,
7 right?

8 A. Yes.

9 Q. And the initial phone consultation would have
10 been with the lawyer. Yes?

11 A. Yes.

12 Q. Then you traveled from College Station to Sugar
13 Land for an hour and -- 1.4 hours. Yes?

14 A. Correct.

15 Q. You conduct a physical inspection of the fall
16 location on October 13th, 2016 and photographed -- it
17 says, "Photographic record and measurements taken 1.0."
18 So, that's one hour?

19 A. Yes.

20 Q. Were you there for actually an hour or is that
21 just a round number?

22 A. Uh, I would say -- I mean I didn't have a timer,
23 but I would say it's close to an hour.

24 Q. So, when you entered the gate of the defendant's
25 property in this particular case, you parked your car, or

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1 are you in the same car with the lawyer or did you come
2 separately?

3 A. We came separately.

4 Q. So, do you enter first or does he meet you
5 somewhere else and then y'all go in together?

6 A. Uh, no, we met at the property.

7 Q. And you get out and you talk to the lawyer about
8 the case on the defendant's property. Yes?

9 A. Yes.

10 Q. And then how long are you actually performing
11 some type of measurements?

12 A. I did not track timing and that sort of detail.
13 I don't know how much time was actually spent measuring

14 Q. Okay. So, certainly less than an hour because
15 you only billed an hour in total, right?

16 A. Yes.

17 Q. Would you agree with me that you probably took
18 measurements for no more than five minutes?

19 MR. McALPINE: Object to the form.

20 A. Actually, there was quite a few measurements.

21 So, I would say it took longer than that.

22 Q. Ten minutes?

23 MR. McALPINE: Object to the form.

24 A. I didn't track the specific time, but I'd say I
25 spent probably equal time taking -- or more time taking

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1 measurements than I did photographs.

2 Q. And then you spend 1.3 hours reviewing various
3 discovery documents including the defendant's disclosures
4 and discovery responses. Yes?

5 A. Yes.

6 Q. You spent 2.4 hours reviewing literature and
7 standards and start preparing your report, right?

8 A. Yes.

9 Q. You have one more phone consultation for .3
10 hours -- that's 18 minutes -- with the lawyer, right?

11 A. Yes.

12 Q. And then you complete preparation of your report
13 for 2.1 hours. Yes?

14 A. Yes.

15 Q. Do you actually physically type up the report
16 yourself?

17 A. Yes.

18 Q. From start to finish?

19 A. Yes.

20 Q. In this case you didn't type up this report from
21 start to finish because the only thing new in your report
22 from all the other reports that you issued starts on page
23 five, right, the "SUMMARY OPINIONS AND CONCLUSIONS"?

24 MR. McALPINE: Object to the form.

25 A. Well, I -- some of the report -- some of the

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1 information in my reports are consistent from one report
2 to the other. So, yes, I don't type every word, but as
3 far as preparing the entire report myself which is how I
4 took your question to be, then the answer to that is yes.
5 I didn't have somebody else working on this report. I
6 did it all myself.

7 Q. For example, if we were to look at page one of
8 your report, the first paragraph is new because that's
9 the way you have to do the intro describing what this
10 case is, right?

11 A. Yes.

12 Q. The next two paragraphs on page one are a cut
13 and paste from your other reports. Yes?

14 A. Uh, for the most part, yes, that's my
15 methodology. So, I use the same methodology for all
16 evaluations. So, while I may edit that as time goes on
17 minor for the most part. Once I prepared it initially,
18 I've used the same thing from one report to the other.

19 Q. And then on page two, everything on page two is
20 the same from previous reports that you have issued.
21 Yes? It's a cut and paste?

22 A. Uh, not fully. As far as my -- when I list a
23 summary of my qualifications, then I -- there is a
24 portion of that information I bring out that's as far as
25 I highlight certain aspects of my qualifications that are

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1 more specific to my evaluation in a particular case. So,
2 that may change depending on the subject matter.

3 Q. So, just minor editing?

4 A. Uh, yes. I mean it's just essentially outlining
5 a summary of my qualifications. So, that really hasn't
6 changed much.

7 Q. So, when you're actually typing up or preparing
8 this report that you've issued that we've attached as
9 Exhibit 1, do you start with a report that you issued in
10 another slip and fall case and edit that report for
11 Aguilar?

12 A. Uh, sometimes if I -- if I, uh, have, you know,
13 similar reports. I either may insert some of that
14 information or just use that report as a beginning -- as
15 a starting point and then delete and edit as necessary.

16 Q. I mean, that's what you did in this case. You
17 used another -- a report from another case as a starting
18 point and edited that other report to make it the Aguilar
19 case. Yes?

20 A. I don't recall exactly what method. I prepare a
21 lot of reports. As far as what method I may have used
22 with this, I do agree that not all of this information
23 was typed originally for this report, but how I --
24 whether I took -- started with the previous report or
25 just copied some of the other reports into a new

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1 document, I don't recall. I've done it both ways.

2 Q. On page three of your report, the only thing
3 different on -- for this report than you used in your
4 other reports is the paragraph "BRIEF SYNOPSIS OF INJURY
5 EVENT," right?

6 A. Well, you're -- if you're lumping all my other
7 reports into one heading, then I would say all of my
8 questions going back would be, no, not all my reports
9 follow this same format, but the majority of them do
10 follow a similar format. That's just how I do my
11 reports. So, of the reports similar to this, then, yes,
12 the only thing on this page that would be different for
13 the most part would be the "BRIEF SYNOPSIS OF INJURY
14 EVENT."

15 Q. And everything in this paragraph (indicating),
16 the "BRIEF SYNOPSIS OF INJURY EVENT," is what you got
17 from the lawyer, right?

18 A. No. I had received all the (pointing) -- all
19 this information, discovery documents prior to preparing
20 the report. So, again as far as describing the incident
21 event I had photographs, I had the incident report from
22 the apartment complex, I had the handwritten statement
23 which I now know to be from Mr. Aguilar's daughter. I
24 also had some e-mail correspondence that discussed what
25 occurred. So, I had all that information prior to

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1 preparing the report.

2 Q. When you write in "BRIEF SYNOPSIS OF INJURY
3 EVENT" that it's generally understood that on October
4 11th, 2013, what's generally understood?

5 A. Well, that's -- essentially, I put that in there
6 so that I'm not sitting here quoting all the information
7 from the file. This is -- I reviewed the file and this
8 is my general summary or synopsis just to give the reader
9 an orientation of what happened. I'm not trying to quote
10 every word and every document I reviewed. It's my
11 general understanding based on the materials I reviewed.

12 Q. The third sentence you write that "Due to
13 Mr. Aguilar's mobility impairment, Alliance Residential
14 converted an existing parking space to a handicap
15 reserved parking space near Mr. Aguilar's apartment unit
16 as an accommodation." Did I read that right?

17 A. Yes.

18 Q. Where are you getting that from?

19 A. I was actually trying to remember this morning
20 where I got that from. I thought I remembered reviewing
21 a document relative to that or -- I don't remember
22 exactly where I got that. I couldn't find. But either
23 they apparently -- 'cause they knew of his disability
24 based on the documents I reviewed. So, it's either they
25 created the handicapped parking space or they assigned

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1 him a unit that was near a pre-existing parking space.
2 As I sit here, I don't know what case the scenario was.

3 Q. You don't know one way or the other what they
4 did, do you?

5 MR. McALPINE: Object to the form.

6 Q. Do you agree with me that words have meaning in
7 your expert reports? Do you agree with that?

8 A. Words have meanings. I agree.

9 Q. Yes. And you wrote that "Due to Mr. Aguilar's
10 mobility impairment, Alliance Residential converted an
11 existing parking space ..." So, let's stop there at that
12 clause. What evidence do you have anywhere in your file
13 that Alliance Residential converted an existing parking
14 space due to Mr. Aguilar's mobility impairment?

15 A. Well, I have information relative to their
16 knowledge of his disability and he was assigned an
17 apartment that was either near a pre-existing space or
18 that space was converted. Part of that's physical
19 evidence meaning that it was the same, that the parking
20 space dimensions are the same as all the other parking
21 spaces in that area. The only thing different is that
22 they added a sign and they added a symbol on the
23 concrete. So, it was not done anything special.

24 So, that's just based on the information I
25 have. That's the reason I put it's my general

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1 understanding. That may change as more information is
2 provided. I don't have testimony from the apartment
3 complex representatives at this point. So, as this -- if
4 they are deposed in this case, then my understanding may
5 change. That's the reason I put it's my general
6 understanding at this time as I prepare the report.
7 That's based on the information I had.

8 Q. Okay. My question is what evidence do you have
9 that due to Mr. Aguilar's mobility impairment, Alliance
10 Residential converted an existing parking space to a
11 handicapped reserved parking space?

12 A. I can't answer that question any better than
13 what I've just answered it.

14 Q. You haven't answered it. So, tell me what
15 documents you have in front of you as part of your file,
16 what evidence you have in front of you that shows that
17 Alliance Residential converted an existing parking space
18 to a handicapped reserved parking space due to
19 Mr. Aguilar's mobility impairment?

20 MR. McALPINE: Object to the form.

21 A. As I sit here, I can't point to a specific
22 document. Again, that's just a -- that's the reason I
23 refer to this as my general understanding. As I'm
24 sitting here, I'm saying it was either they converted an
25 existing parking space or he was assigned an apartment

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1 near a pre-existing handicapped parking space.

2 Q. Okay. So, tell me where in your report you
3 wrote that he was assigned an apartment near an existing
4 parking space. Where is that?

5 A. (Witness reading.) Well, in that same
6 sentence -- as far as you're just asking where I state
7 that it's near his apartment?

8 Q. No. You said that it was either one of two
9 things. Either Alliance Residential converted an
10 existing parking space to a handicapped reserved parking
11 space due to Mr. Aguilar's mobility impairment or he was
12 assigned an apartment near an existing handicapped
13 parking space, right? You said those only two things,
14 one or the other. Yes?

15 A. Well, or just by chance -- I mean all I -- I
16 was -- I know what apartment number he used or that he
17 was living in for 10 years and I know where the
18 handicapped parking space was that he had been using
19 during that time. So, as far as the proximity, I mean
20 that's based on physical evidence I mean in looking at
21 it.

22 Q. You don't know whether Alliance converted a
23 parking space to handicapped, an existing parking space
24 to a handicapped space, do you?

25 A. As I sit here, no, not without information from

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1 them. That's correct.

2 Q. You don't know why Mr. Aguilar was assigned the
3 apartment that he had, do you?

4 A. Again, I have not received testimony from the
5 representatives of the apartment. So, no, that's --
6 that's typical in the apartment complex management world
7 as far as if you have a disabled resident, potential
8 tenant that you either provide an accommodation with a
9 parking spot or you place them in a unit that's near an
10 existing parking space. So, I don't have specific
11 information from this complex on how they manage that
12 situation, but that is what's typical in the industry.

13 Q. So, when you wrote in your report on page three
14 that "Due to Mr. Aguilar's mobility impairment, Alliance
15 Residential converted an existing parking space to a
16 handicap reserved parking space near Mr. Aguilar's
17 apartment unit as an accommodation," you made that up,
18 right?

19 MR. McALPINE: Object to form.

20 A. No, I did not make that up. That's based on the
21 evidence that I have. That's what it appears from the
22 physical evidence because basically all they did was put
23 up a sign in a parking space that was the same as all the
24 others and that's the same thing that I viewed at other
25 spaces in their complex.

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1 Q. When did they put up the sign?
 2 A. I don't have that information.
 3 Q. When did they paint that parking space to make
 4 it a handicapped parking space?
 5 A. According to Mr. Aguilar, I believe he said two
 6 or three years prior to his incident.
 7 Q. Yeah, but you didn't know any of that before you
 8 issued your report, right? You didn't know what he said
 9 one way or the other, did you?
 10 A. That's correct.
 11 Q. You have no evidence that they did anything in
 12 connection with that parking space to make it an
 13 accommodation for Mr. Aguilar, do you?
 14 MR. McALPINE: Object to the form.
 15 A. As far as what they may have done specifically
 16 to that parking space?
 17 Q. Yes, for Mr. Aguilar as an accommodation. You
 18 don't know, do you?
 19 A. Not at this time, no.
 20 Q. You then write on page 3 that "... at the time
 21 of Mr. Aguilar's arrival to the apartment complex from
 22 work on October 11th, 2013, the parking space was in the
 23 process of being repainted as general maintenance."
 24 Where did you get that from?
 25 A. Uh, from the incident report and the e-mail

1 A. (Witness reading.) Estimating from my
 2 measurements about 70 feet.
 3 Q. And within that 70 -- within a 70-foot radius or
 4 a radius of 70 feet, how many handicapped parking spaces
 5 were there?
 6 A. Including the one he normally parked in?
 7 Q. Yes.
 8 A. Just those two.
 9 Q. And within a radius of 70 feet, how many
 10 parking -- handicapped parking spaces were there from
 11 around Mr. Aguilar's apartment unit?
 12 MR. McALPINE: Object to the form.
 13 A. I think I got lost in your question. Can you
 14 re-ask it?
 15 Q. That's all right. I'll rephrase. If you're
 16 standing at Mr. Aguilar's apartment unit where he lived,
 17 within a radius of 70 feet how many handicapped parking
 18 spaces were there?
 19 MR. McALPINE: Object to the form.
 20 A. To my knowledge just one, the one that he
 21 normally parked in.
 22 Q. You've read Mr. Aguilar's testimony now that
 23 there was another handicapped parking space 30 feet or so
 24 away from where he parked?
 25 A. Well, if he was referring to the, uh,

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1 correspondence that was I assume produced through
 2 discovery.
 3 Q. You then write that "Accordingly, Mr. Aguilar
 4 parked in the nearest available parking space to his
 5 apartment unit, which was just across the driveway from
 6 the handicap space that was being ..." repainted. Is
 7 that what you wrote?
 8 A. Yes.
 9 Q. How many other handicapped parking spaces were
 10 there in that area around Mr. Aguilar's apartment?
 11 A. Well, can you further define what you mean by
 12 that area? How big an area are you speaking of?
 13 Q. In the immediate vicinity that he could have
 14 used.
 15 A. Well, again that's a loose term. I mean that
 16 was -- the one that he had been using for ten years was
 17 the closest one to his apartment complex. The nearest --
 18 the next nearest one was over across the driveway at the
 19 leasing office.
 20 Q. How far away?
 21 A. How far away from the other parking space or
 22 from his apartment unit?
 23 Q. How far away from the parking space where he
 24 would often park and couldn't on the day of this incident
 25 according to him was another handicapped parking space?

1 handicapped parking space at the leasing office, then his
 2 estimate of the distance would be incorrect.
 3 Q. And your estimate of the distance is what?
 4 A. Based on my measurements I took -- I didn't take
 5 a direct measurement, but trying to add the measurements
 6 I did take, I would estimate about 70 feet.
 7 Q. How many parked -- handicapped parking spaces
 8 were there along this same strip of parking spaces where
 9 Mr. Aguilar's apartment unit was located?
 10 A. Well, there was a space at a -- at another
 11 building that's a little further down on that same side,
 12 but I didn't continue any further past that one. That
 13 one (pointing) was approximately -- that was probably --
 14 based on my measurements that would be close. It would
 15 be about 73 feet from the (pointing) space that he
 16 normally utilized.
 17 Q. Okay. So, within 73 feet of the space that he
 18 normally utilized, there were 2 other handicapped parking
 19 spaces?
 20 A. Based on my estimating of distance to the
 21 leasing office then, yes.
 22 Q. And you don't know whether there were any others
 23 along the same strip of parking spaces near his unit.
 24 A. I did not go further than the one that was 73
 25 feet away. His building as you enter the entrance was

1 the first (indicating) unit on the right. So, you'd have
2 to go across (indicating), you know, the entrance
3 driveway with two gates before you got to the other side
4 of the complex. So, again I didn't go further than that
5 distance of 73 feet of that same side of the road that he
6 was on. So, I don't know what may have been further
7 around in that complex.

8 Q. You then -- you continue on on page three by
9 writing that "... Mr. Aguilar parked in the nearest
10 available parking space to his apartment unit, which was
11 just across the driveway from the handicap space that was
12 being painted." Where did you get that information from?

13 A. I believe that was information that was relayed
14 at the time -- at this time from, uh, Mr. McAlpine
15 through his conversations with Mr. Aguilar.

16 Q. The lawyer told you?

17 A. Yes.

18 Q. The next sentence is that "The available parking
19 space bordered a curb and grassy area along the driver's
20 side of the vehicle." Where are you getting that from?

21 A. From my inspection of the site.

22 Q. Next sentence, "Mr. Aguilar exited his vehicle,
23 and due to the narrowness of the parking space and the
24 limited space between his vehicle and the curb, it is
25 understood Mr. Aguilar was attempting to maneuver in the

1 limited space requiring him to negotiate the curb as he
2 opened the back door of his vehicle to retrieve ..." the
3 "walker from the backseat, and while attempting to remove
4 his walker, Mr. Aguilar lost his grasp of the walker,
5 causing him to lose his balance and fall backwards
6 landing on the curb, which is understood to have resulted
7 in injury, to include paralysis." There's a lot of
8 information in that one sentence. Where did you get any
9 of that information from, the lawyer?

10 A. Most all of that information -- part of that was
11 my assessment. The first part of the sentence as far as
12 the size, narrowness of the parking space and the limited
13 space between the vehicle and the curb, that was based on
14 my inspection. The rest of that information as far as
15 retrieving his walker and attempt to remove it, that was
16 through the incident report and the handwritten statement
17 that I was supplied.

18 Q. So, what you came up with is that -- is the part
19 of that sentence that says, "... due to the narrowness of
20 the parking space and the limited space between his
21 vehicle and the curb ..." Is that right?

22 A. Yes, based on my inspection.

23 Q. You don't know how close he parked his car to
24 that curb, do you?

25 A. Only based on the photographs that I had

1 received.

2 Q. What photographs? I'm talking about on the day
3 of this incident. You don't know how far he parked his
4 car away from the curb, do you?

5 A. Uh, and maybe I'm -- maybe I could be
6 misinterpreting as some of the file, but I was thinking
7 that some of these photographs were taken as part of the
8 incident report (indicating).

9 Q. I'm just asking you what you know.

10 A. It'd be based on the photographs showing a blue
11 car with a handicapped license plate that's parked in the
12 space, if those are not from the -- if that's not his
13 car, which he did describe as a blue car. So, that's
14 what I was basing what -- how he was parked. And also
15 you can only park if you're within the lines. It's an
16 eight foot space. So, you don't really have much room to
17 park if you park within the actual parking space.

18 Q. Oh, so that space where he parked is 96 inches?

19 A. Close. It would be a little less than 94 to the
20 center line.

21 Q. So, when you write on page five of your report
22 in the second to last paragraph that "The parking space
23 Alliance Residential provided for Mr. Aguilar was 92
24 inches wide, and had no access aisle," which space are
25 you referring to?

1 A. Actually both of them. That was -- I guess that
2 was a transcribing error in my report because I had
3 measured the space to the interior dimension of the line.
4 The space he normally parked in was 92 inches to that
5 point and the space where he parked on the date of the
6 incident was 91 and 9/16ths inches, but there is a 4-inch
7 line. So, to the centerline would add another two
8 inches. So, it would be approximately 94 inches.

9 Q. So, when you wrote on page 5 of your report that
10 it was 92 inches, that was a mistake?

11 A. Well, I transcribed it wrong from my notes and
12 failed to incorporate the extra two inches to the
13 centerline of the four-inch line.

14 Q. Okay. We call that a mistake. Was that a
15 mistake?

16 A. Uh, yes, it's a transcription mistake in my
17 report.

18 Q. Another mistake that you made in connection with
19 the report that you issued is concluding that the ADA
20 even applied to the parking spaces in this case, true?

21 MR. McALPINE: Object to the form.

22 A. Well, apply can be used in two different ways.
23 So, in my opinion it does apply by content and the
24 subject matter, but from -- if you're talking about
25 enforcement from some governmental entity, then, no, it

1 would not be enforced in this particular situation except
2 at the parking space for the leasing office because
3 that's a public accommodation.

4 Q. Where do you have in your report that the ADA
5 doesn't apply for enforcement purposes?

6 A. Well, I didn't list that out. I just -- I mean
7 in paragraph 3 on page 5 is where I speak of the ADA, the
8 Texas Accessibility Standards, and ANSI A117.1.

9 Q. Do you agree that the Americans with
10 Disabilities Act does not apply to the apartment complex
11 parking spaces in this case, Broadstone New Territory
12 Apartments?

13 MR. McALPINE: Object to the form.

14 A. It applies by subject matter and content, but as
15 I stated before, as far as being enforceable by some type
16 of governmental entity, then no.

17 Q. When you say it applies by subject matter and
18 content but not by enforcement, what do you mean?

19 A. Well, we're speaking of an accessible parking
20 space and the ADA is a well researched and authoritative
21 resource for the design of accessibility components to
22 include accessible parking spaces. So, it's an
23 authoritative resource that if you're wanting to design
24 an accessible route or accessible parking space no matter
25 whether some governmental entity is going to force you to

1 do so, if I want to go and even if at my house I want to
2 put in an ADA or accessible parking space, that would be
3 a viable resource to go to from a design perspective to
4 say how do I need to design this and install an ADA
5 parking space because that's specifically the subject
6 matter that that particular resource contains. So, by
7 the content it would be directly applicable to the
8 evaluation design of an accessible parking space no
9 matter whether a governmental entity is going to force me
10 to install the space at my home or if I'm doing it just
11 because I want to because I have a need for that.

12 Q. When did you first figure out that the ADA --
13 compliance with the ADA was not required for this
14 apartment complex?

15 A. Well, I knew that before I ever -- the first
16 conver- -- I've known that for a long period of time well
17 before this case ever came into being.

18 Q. Okay. So, your testimony under oath today is
19 that you knew from the moment you were contacted in
20 connection with this case that the Americans with
21 Disabilities Act did not apply to the parking spaces at
22 the apartment complex.

23 MR. McALPINE: Object to the form.

24 A. Well, to clarify, as an enforceable requirement
25 except at the leasing office because that is considered a

1 public accommodation but for the parking space that we're
2 speaking of that Mr. Aguilar had been using for 10 years,
3 then as a enforceable requirement, that's correct. It
4 does not apply.

5 Q. And you knew that from the very beginning.

6 A. Yes.

7 Q. And you never advised the court or counsel
8 anywhere in this written report that the ADA did not
9 apply to the parking spaces from an enforcement
10 standpoint.

11 A. Well, also I did not state in there that -- I
12 did not say that it didn't, but I also did not say that
13 it did. So, I guess that's why we have depositions to
14 clarify the information. I did inform during our
15 conversation Mr. McAlpine.

16 Q. And when did you inform him of that?

17 A. I believe we discussed that in our initial
18 conversation.

19 Q. So, you'd agree with me that there's no way that
20 there could ever be a violation of the Americans with
21 Disabilities Act by the defendant in this case because
22 the ADA doesn't apply as far as violations or enforcement
23 are concerned to this apartment complex parking lot.

24 A. I don't agree with that because it does apply
25 and can be enforced at places of public accommodation to

1 include their leasing office.

2 Q. Okay. I'm going to make it more specific then.
3 And I understand that. You're saying it applies by the
4 leasing office, but as far as where Mr. Aguilar was
5 parking, both the space he intended to park in and the
6 space that he actually parked in, the ADA did not have
7 to -- requirements did not have to be followed by
8 Alliance Residential, true?

9 A. From an enforcement standpoint, that's correct.

10 Q. And when you say from an enforcement standpoint,
11 you mean that the apartment complex owner, Alliance
12 Residential, could never be deemed to have violated the
13 ADA in connection with Mr. Aguilar's parking space and
14 his accident?

15 MR. McALPINE: Object to the form.

16 A. As I understand your question as far as -- I
17 would say, yes, if you're speaking from whether they
18 could be fined or forced to create those spaces. That's
19 correct.

20 Q. So, if there's been an allegation in the
21 complaint in this case that there was a violation of the
22 Americans with Disabilities Act, that's not true,
23 correct?

24 A. Well, it depends on how they intended that in
25 their wording of a violation. I mean is it a violation

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1 of their provisions of that act, yes, but from an
2 enforcement standpoint, no.

3 Q. There's an allegation in the complaint in this
4 case that the conduct of the defendant, Alliance
5 Residential, violates 42 U.S.C. (A) Section 12182 in its
6 implementing regulations. Is that true or not?

7 MR. McALPINE: Object to the form.

8 A. What was the, uh, site again?

9 Q. 42 U.S.C. (A) Section 12182.

10 A. I don't know. I did not prepare the complaint.
11 So, I'd need to look at that to see what the content was
12 for that particular provision.

13 Q. There's an allegation that the defendant's
14 conduct in failing to provide an accessible handicapped
15 parking space was discriminatory and denied the plaintiff
16 the opportunity to park safely and walk to and from his
17 place of residence safely under the Americans with
18 Disabilities Act. True or not?

19 A. I did not evaluate this as from a discrimination
20 standpoint. So, I'm not offering opinions as far as
21 discrimination.

22 Q. In any respect?

23 MR. McALPINE: Object to the form.

24 A. As far as using those terms, that's correct.

25 Q. The defendant's voluntary construction

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1 renovation, repair and/or alteration activities on the
2 day in question failed to conform with ADA Accessibility
3 Guidelines according to the amended complaint. Is that
4 true or not?

5 A. Just so I can -- do you mind if I pull out my
6 copy of that --

7 Q. Oh, sure.

8 A. -- so I can read along with you so I can get a
9 better understanding of what you're reading from? You're
10 reading from the original petition?

11 Q. The amended.

12 A. Okay. So, where are you at in here? Sorry.

13 Q. Okay. It starts on the bottom of page four.
14 This is under Count 2, Violation of the Americans with
15 Disabilities Act. Do you see that?

16 A. Yes.

17 Q. Paragraph 35.

18 A. I agree with paragraph 35.

19 Q. You agree with it?

20 A. Yes.

21 Q. From a standard standpoint but not from a
22 violation standpoint, true?

23 A. Well, as its written as far as that their
24 voluntary construction, renovation, repair or alteration
25 failed to conform with ADA Accessibility Guidelines,

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1 that's true.

2 Q. Okay. And the follow-up question is that the
3 ADA Accessibility Guidelines did not apply, were not
4 applicable to that, uh -- to the parking space at issue,
5 right?

6 A. Well, it depends on how you use the term
7 applicable. From an enforcement standpoint, that's
8 correct, but by content, yes, they are applicable.

9 Q. When you're saying by content they're
10 applicable, you mean that if somebody wanted to actually
11 make it comply with the ADA, they could, but they didn't
12 have to, right?

13 A. Right. There's no entity that would require
14 them to do that in this situation.

15 Q. And then it never, ever could be a violation of
16 the ADA by the defendant in this case in connection with
17 the parking spaces that Mr. Aguilar used on the day or
18 intended to use on the day of the incident, right?

19 A. From a statutory standpoint that you're speaking
20 of, that's correct, yes, unless the law changes, but as
21 of now, no.

22 Q. And paragraph 36 of the amended complaint that
23 says: The aforementioned conduct violates 42 U.S.C. (A)
24 Section 12182 and its implementing regulations, that's
25 not true, is it?

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1 MR. McALPINE: Object to the form.

2 A. As far as the 42 U.S.C. (A) 12182, I'd have to
3 look at that on there. Those numbers are not coming to
4 the top of my head at the moment. So, I --

5 Q. You're an expert in this stuff. You don't know
6 what that statute says?

7 A. Not off the top of my head. I --

8 Q. You're an expert in the ADA, aren't you?

9 A. Well, the 42 -- 36 -- again by that numbering
10 system, I don't recognize that as far as from the ADA
11 standpoint.

12 Q. You have no idea what that statute says.

13 MR. McALPINE: Object to the form.

14 A. Again, unless -- if that's a -- 'cause sometimes
15 things can be in the U.S. code that are equivalent to
16 something else in federal requirements. So, do I know
17 what the content is? Possibly. But I don't recognize
18 that numbering. I mean I deal with thousands of
19 provisions and building codes, accessibility standards,
20 federal workplace standards, and to memorize every
21 specific number without having what the particular
22 provision is saying, I can't say. I mean they all start
23 running together to some degree.

24 So, without seeing the content do I know
25 about it? Possibly. But that's the reason I'm saying

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1 just looking at the numbers, they're -- I don't -- I'm
2 not remembering those particular numbers.

3 Q. You can't tell us what it says.

4 MR. McALPINE: Object to the form.

5 A. You're asking me as far as off the top of my
6 head what the -- this particular provision in the U.S.C.
7 (A) says? Off the top of my head, no, I don't have it
8 memorized.

9 Q. Do you agree with me that the apartment complex
10 at issue in this case was not required to comply with the
11 ADA or the Texas Accessibility Standards?

12 MR. McALPINE: Object to the form.

13 A. As you state your question, I don't agree with
14 that.

15 Q. So, tell me what provision under the ADA or the
16 Texas Accessibility Standards that required as a matter
17 of law the defendant, Alliance Residential, to comply
18 with either the ADA or the Texas Accessibility Standards.

19 A. Any place of public accommodation is covered by
20 the ADA and the Texas Accessibility Standards. So, when
21 you mention the apartment complex, generally there are
22 requirements, but if you're limiting it to that
23 particular parking space, then no.

24 Q. Let me ask a better question, and that's
25 actually a fair answer. What you're talking about again

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1 is the parking space near the leasing office because
2 that's a public accommodation, right?

3 A. Yes.

4 Q. Let's limit it to the parking space where
5 Mr. Aguilar intended to park that was being painted and
6 then the parking space where he actually parked at the
7 time of the incident. Okay?

8 A. Okay.

9 Q. Do you agree with me that the defendant,
10 Alliance Residential, was not required to comply with the
11 ADA or the Texas Accessibility Standards as far as those
12 two parking spaces are concerned?

13 A. That's correct.

14 Q. Do you agree with me that the identification of
15 accessible spaces was not required under the ADA?

16 A. Are we still talking about limiting those two
17 parking spaces?

18 Q. Yes, sir.

19 A. Then, yes, that's correct.

20 Q. Do you agree with me that the Fair Housing Act
21 does not address maintenance of parking spaces?

22 A. I would say generally that's correct.

23 Q. Do you agree with me that even though the ADA
24 didn't apply to those two parking spaces, the one where
25 he intended to park and the one where he actually parked,

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1 that the ADA nonetheless still allows isolated or
2 temporary interruptions in service or access?

3 A. I may have to have you repeat that question, but
4 going back to your previous one just to clarify my
5 answer, as far as maintenance, do they address how the
6 maintenance is done or when? No. But part of providing
7 an accessibility component between the parking spaces is
8 maintaining them. So, you can't just provide it on day
9 one and never do anything for the rest of the time
10 because essentially that -- it essentially goes away
11 because of lack of maintenance. So, is there maintenance
12 required, yes, but it doesn't go into detail about how it
13 should be done.

14 Q. Do you agree with me that even though the ADA
15 didn't apply to the parking space where he intended to
16 park on the day of the incident or the parking space
17 where he actually parked, that the ADA nonetheless still
18 allows isolated or temporary interruptions in service or
19 access?

20 A. Again, I assume you're talking about from a
21 statutory standpoint as far as application, but there can
22 be temporary interruption in -- in service as long as
23 it's done reasonably.

24 Q. Do you agree with me that in connection with
25 Mr. Aguilar's accident, that there was no violation of

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1 the ADA or the Texas Accessibility Standards by Alliance
2 Residential?

3 A. From a statutory standpoint, I would agree with
4 that, yes.

5 MR. McALPINE: Can we go off the record for
6 a second? Well, I need to take a break.

7 MR. HASSINGER: Absolutely.

8 (Short recess)

9 Q. Okay. We're back on the record, Mr. English.
10 I'm still looking at the amended complaint and this is on
11 page five. It's count three, the violation of the Texas
12 Accessibility Standards. Do you see that?

13 A. Yes.

14 Q. Do you agree with me that there has been no
15 violation of the Texas Accessibility Standards in
16 connection with this accident?

17 A. If you're speaking from a statutory standpoint,
18 then yes.

19 Q. And you've dealt with a lot of premises
20 liability cases, true?

21 A. Yes.

22 Q. Would you agree with me that there was no defect
23 in the premises that caused Mr. Aguilar's accident?

24 MR. McALPINE: Object to the form.

25 A. I don't agree with that.

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Q. In your opinion where do you offer any opinion whatsoever in your report that we've attached as Exhibit 1 that there was a defect in the premises?

A. I don't typically use the term defect. So, likely it doesn't use that term in there. But I did outline my opinions relative to what I thought was lacking or wrong with the premises.

Q. For example, in paragraph or -- paragraph three or opinion and conclusion three on page five of your report, that's where you talk about the Americans with Disabilities Act or ADA and the Texas Accessibility Standards, true?

A. Among other things, yes.

Q. And you opined that "... other than installing the handicap reserved signage, Alliance Residential failed to provide a space that complies with the safe design" of ... accessible parking space -- "of a accessible parking space as published within the Americans with Disabilities Act - Standards for Accessible Design, the Texas Accessibility Standards, or ANSI A117.1 - Accessible and Usable Buildings and Facilities." Did I read that correctly?

A. Yes.

Q. But we now know as we've covered in this deposition that the parking spaces at issue in this case

Q. And the reason you disagree is because the parking space that he decided to park in didn't have an access aisle, right?

MR. McALPINE: Object to the form.

A. Well, none of the handicapped parking spaces I viewed had access aisles except for the one at the leasing office.

Q. You only viewed the two.

A. There are three in that area.

Q. Or three. Yes?

A. That's correct.

Q. You viewed three?

A. In that area, yes.

Q. And you don't know whether the -- whether there were other handicapped parking spaces available for Mr. Aguilar to use on the day of this incident, do you?

A. Uh, there were none for his building.

Q. Because the one for his building was being painted at the time.

A. Right. And my understanding based on his testimony is that the only -- that there were none other available.

Q. That's not what he said in his deposition.

A. It is.

Q. Where is it?

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did not have to comply with the ADA, Texas Accessibility Standards, or ANSI, true?

A. True from a statutory standpoint relative to the ADA and the Texas Accessibility Standards, but ANSI A117.1 is enforceable through the Fair Housing Act.

Q. And ANSI A117.1, Accessible and Usable Buildings and Facilities says what?

A. Well, it says a lot of things. Are you speaking of relative to parking?

Q. Relative to the reason that you cited it in your report.

A. Well, one, it speaks to the requirement for an access aisle, not only a 96-inch wide or 8-foot parking space, but also in combination with that also required is a minimum 60-inch wide access aisle relative to the accessible parking space as far as that requirement. And that's also outlined in the Fair Housing Act.

Q. So, a 60-inch access aisle?

A. Yes.

Q. That's the reason that you cited ANSI A117.1 in connection with this case?

A. That's correct.

Q. The lack of an access aisle that's 60 inches wide had nothing to do with Mr. Aguilar's accident, true?

A. I disagree.

A. (Witness reading.) On page 30 speaking -- answering whether there was a handicapped parking space available, he says, "I believe it was taken. ... Because if it had been available, I believe I would have parked there rather than ..." a "regular one because I had done that before," is what he answered. I don't know if you want me to keep reading, but that's where I'm basing my information from.

Q. Yeah, you didn't read the rest of it?

A. Yes. You want me to continue?

Q. No, I'm asking whether before you just made that statement under oath a minute ago, whether you had actually read the rest of his testimony.

A. I read his testimony, yes.

Q. And you read the part of his testimony on page 30 where I asked him this question, "You're saying you believe you would have, but is it fair to say that you don't know whether that one was available or not?" And he answered, "I don't know."

A. Right. It was his recollection three years after the incident, but he also -- I can't ignore what he had on page 30 in the same sentence.

Q. It's not the same sentence. It's a different question.

A. It's speaking on the same topic.

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1 Q. Do you agree with me that he ultimately
2 testified that he didn't know whether another parking
3 space was available or not?

4 A. I'm not disagreeing with that, but he also
5 testified as I mentioned on page 30 that he believed it
6 was taken and gave the reason why, but at his
7 recollection three years after the fact was he can't
8 remember for sure. That's how I read all -- all of it on
9 that line of questioning.

10 Q. Okay. So, if there was another handicapped
11 parking space available for him to use, do you agree with
12 me that that's significant in connection with this case?

13 A. It depends on what space was available.

14 Q. Let's assume that the space that was available
15 was the one by the leasing office. Do you agree that
16 that's a significant fact?

17 A. Uh, yes, in the fact that that would be an
18 alternative for him to park there, although he also
19 testified that generally that's not -- tenants were not
20 supposed to park there, although he had before when his
21 space was not available.

22 Q. And he doesn't recall whether the other
23 handicapped parking space was available, too, either,
24 does he?

25 A. Well, I mean his testimony -- we already

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1 reviewed what his testimony was, but it wouldn't matter
2 relative to access aisle because that didn't have an
3 access aisle either. So, it was not compliant as well.

4 Q. But the access aisle didn't cause him to fall,
5 did it?

6 A. I disagree.

7 Q. Because again he parked in a space that he chose
8 to park in that didn't have an access aisle, right?

9 MR. McALPINE: Object to the form.

10 A. Because based on the evidence likely there was
11 not an alternative, a viable alternative available.

12 Q. Based on what evidence there likely was not a
13 viable alternative available?

14 A. His testimony and also just the -- the physical
15 availability at the parking space. There was only one
16 parking space that was actually of proper design and that
17 was at the leasing office, which his understanding is
18 that tenants were not supposed to use even though he had
19 in the past because other ones were not available, but
20 there was only one in the entire facility of proper
21 design that I viewed, or other ones I viewed only that
22 one was the proper design.

23 Q. And you're basing that opinion on his testimony
24 that he believes he would have parked in another one, but
25 doesn't recall whether it was available or not?

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1 MR. McALPINE: Object to the form.

2 A. I mean I read the testimony that I was basing my
3 opinion on. So, yes, the fact that he believes it was
4 taken because otherwise he would have parked there as he
5 had done in the past, but I agree he says he doesn't have
6 a -- three years later he doesn't recall specifically.

7 Q. And you also read his testimony where he said
8 that he just simply looked over to the left and saw the
9 first available parking spot and parked there?

10 A. Well, that's true, but it happened so that that
11 one at the leasing office was in that same area. He
12 would have passed it before he passed the other one.

13 Q. He would have -- he would have passed the other
14 handicapped parking space near the leasing office before
15 he passed which parking space?

16 A. The one that he normally parks in or the one
17 that he ultimately parked in. As he entered the
18 facility, you first -- or you first pass the leasing
19 office before you get to the two parking spaces, the one
20 that he normally parked in (indicating) that's marked as
21 handicapped, and the one that he ultimately parked in
22 (indicating). So, he would have already passed it.

23 Q. And where is the third available handicapped
24 parking space?

25 A. About 73 feet down further. That would have

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1 been on his right. So, he hadn't got to that one yet.

2 Q. And never did, did he?

3 A. I don't know other than the fact that -- I have
4 no evidence that he went that far, but I don't know.
5 That's a good distance down.

6 Q. Do you agree with me that if the handicapped
7 parking space that he normally parked in was being
8 painted or wasn't available for some reason, then he
9 should have tried to park in another handicapped parking
10 space before simply looking to his left and parking where
11 he did?

12 A. Well, in my opinion the only safe parking space
13 in that area is the one at the leasing office. The one
14 that he was normally parked in was not safe for a person
15 with a disability nor the one further down was safe
16 because neither one of them had an access aisle, which is
17 a very important component and a required component for
18 an accessible parking space.

19 Q. How many years had he parked in the parking
20 space that he was intending to park in on the day of the
21 incident?

22 A. Well, he'd lived in the apartment complex almost
23 10 years.

24 Q. And how many times did he park in that parking
25 space?

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1 A. I mean he estimated hundreds, but I don't think
2 anybody has a specific number of times.

3 Q. And how many times did he fall while using that
4 parking space where he normally parked?

5 A. To my knowledge, I'm not aware of any.

6 Q. So, the fact that that parking space had no
7 access aisle never played a role in any accidents with
8 respect to Mr. Aguilar in the past, true?

9 A. Not to my knowledge, but it would be a
10 significant risk just waiting for the right circumstances
11 to occur.

12 Q. And if Mr. Aguilar had actually parked in one of
13 the other available handicapped parking spaces, then we
14 wouldn't be here today. Do you agree with that?

15 A. No. Again, without having an access aisle, it
16 is noncompliant with any accessibility standards relative
17 to parking, whether you're looking at the ADA, the Texas
18 Accessibility Standards, or the ANSI A117 under the Fair
19 Housing Act. It's noncompliant with any of those and so
20 there's an unreasonable risk associated with that parking
21 space whether an accident occurs or not. And so,
22 therefore, if an accident had occurred even in the
23 parking space that he normally parked in, I would still
24 be critical because it didn't have an access aisle and
25 that's a significant design feature that it was missing.

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1 Q. As far as ANSI is concerned?

2 A. Well, of all of the standards that I've
3 mentioned I mean 'cause all those are what I considered
4 good practice or industry standards relative to the safe
5 design of accessible features, whether it be parking
6 ramps, water fountains, whatever it may be, doorways.
7 So, those are all authoritative standards of care. And
8 really ANSI and ADA lead the way as far as the research.
9 Texas Accessibility normally just takes whatever the ADA
10 publishes and puts it in their standards.

11 Q. And those are for handicapped parking spaces.
12 Yes?

13 A. As far as the standards themselves?

14 Q. Yes.

15 A. Well, that's one component within those
16 standards. They've applied to a lot of different areas.

17 Q. And he didn't park in a handicapped parking
18 space on the day of this accident, right?

19 A. That's correct.

20 Q. And the parking space that he parked in wasn't
21 required to have an access aisle with 60-inches wide, was
22 it?

23 A. That's true.

24 Q. Let's talk about your opinions starting with
25 number one. You write that "Alliance Residential knew

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1 or ... should have known of their responsibility to
2 exercise reasonable care to establish, monitor, and
3 maintain their commercial multi-family residential
4 premises free of hazards likely to cause serious
5 physical" injury -- "harm to tenants, guests,
6 employees ... and "other persons." Did I read that
7 correctly?

8 A. As far as that portion of one, yes.

9 Q. And what was the hazard in connection with
10 Mr. Aguilar's accident, the curb in the nonhandicapped
11 parking space?

12 A. Well, I stepped a little bit further back than
13 that (indicating) to the degree that they -- in my
14 opinion they did not provide a adequate accommodation for
15 a known disabled tenant at their facility which
16 ultimately led to the space that nearest his apartment
17 unit that was generally designated by signage at least as
18 an accessible parking space being unavailable for his use
19 which ultimately led for him to park in the parking space
20 that he did which was unsafe given his disability.

21 Q. Alliance Residential didn't provide an
22 accommodation for him as far as a parking space is
23 concerned that he could use. Is that your testimony?

24 A. For that specific tenant, that's correct.

25 Q. For that specific tenant in the sense of having

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1 a reserved sign up saying Gustavo Aguilar on it?

2 A. It doesn't have to say his name, but as far as
3 having a -- if you're providing accommodations for a
4 specific tenant because of his disability, then to have a
5 reserved space for that tenant, whether it be based on
6 the apartment unit or however -- there are different ways
7 you can do the signage, but to reserve it for that
8 tenant, because otherwise if it's just a general
9 accessible space, anybody can park there that comes in
10 that has proper tags, whether it be a visitor, tenant
11 from anywhere in the facility, and then Mr. Aguilar is
12 left just as he was to this day without a place to park
13 by his assigned apartment unit. So, that's where --

14 Q. He never had an assigned parking space.

15 A. That's correct. That's my complaint. I said
16 his assigned apartment unit.

17 Q. He never had an assigned parking space at this
18 complex, true?

19 A. That's correct.

20 Q. And there's no statute or standard that required
21 Alliance Residential to provide him with an assigned
22 parking space, correct?

23 MR. McALPINE: Object to the form.

24 A. From a statutory standpoint, that's correct.

25 Q. And you don't have any evidence that the parking

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1 space that he usually parked in was a specific
2 accommodation for Mr. Aguilar, do you?

3 MR. McALPINE: Object to the form.

4 A. Well, he -- it was known of his disability. He
5 was a long-term tenant. So, either it was just a major
6 coincidence that his apartment unit was right by that
7 parking space or it was done intentionally. Hopefully,
8 it was done intentionally out of good faith by the
9 apartment complex either to provide the space or provide
10 a unit near a space for handicaps.

11 Q. My question was you don't have any evidence that
12 Alliance Residential provided a specific accommodation to
13 Mr. Aguilar in particular as far as that parking space is
14 concerned, do you?

15 A. Well, that's true, but they should have if they
16 didn't.

17 Q. But there was a parking space there available
18 for him to use near his unit when he needed to use it,
19 true?

20 A. No.

21 Q. Because it was being painted at the moment that
22 he drove up?

23 A. Well, on that occasion it was because it was
24 being painted. On other occasions it's because other
25 people were parked there.

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1 Q. And --

2 A. So, it's not always available for him to
3 utilize.

4 Q. And he testified in his deposition that when it
5 wasn't available in the past, that he had used other
6 handicapped parking spaces on multiple occasions, true?

7 A. Yes.

8 Q. And that was safe practice and a reasonable
9 thing for him to do. Yes?

10 A. In my opinion, no.

11 Q. Okay. So, what standard or statute required
12 Alliance Residential to have more than one handicapped
13 parking space in front of his unit?

14 A. There's not a statute or a standard from that
15 standpoint that requires them where somebody's going to
16 come in and fine the apartment complex for not doing it.
17 It's more from just an ordinary care, good practice
18 standpoint of accommodating your tenants at your
19 particular complex.

20 Q. So, there was no legal requirement for them to
21 do that whatsoever.

22 MR. McALPINE: Object to the form.

23 A. Well, by doing that, you mean providing
24 additional parking spaces at that particular building?

25 Q. Yes.

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1 A. By legal meaning an enforceable requirement,
2 then that's correct.

3 Q. How long was the contractor painting the parking
4 space that Mr. Aguilar was going to park in on the day of
5 the incident?

6 A. As far as the total time he had spent doing
7 that, I don't have information on that other than
8 information provided in the incident report that said he
9 had about 10 minutes left.

10 Q. You don't have any other information besides
11 that whatsoever. You don't know whether he had 10
12 seconds left, 5 minutes left or 10 minutes left.

13 A. I would say based on the fact of the photographs
14 that were provided show it only half painted, that it
15 would be more than 10 seconds, but more specifically
16 other than the 10 minutes mentioned in the incident
17 report, no, I don't have information how long it would --
18 specifically how long it would take him to paint the
19 remaining half of the symbol and also to get his
20 equipment out of the way. I can't give you a specific
21 amount of time other than the apartment complex
22 estimating in their incident report 10 minutes.

23 Q. And there's no statute or standard that
24 prevented Alliance Residential, the defendant in this
25 case, from performing temporary maintenance to that

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1 particular parking space in the form of painting, true?

2 MR. McALPINE: Object to the form.

3 A. That's true.

4 Q. Your opinion number two in your report on page
5 five, you write that to fulfill -- "In order to fulfill
6 such responsibility, Alliance Residential knew or should
7 have known that it is necessary to establish and
8 implement a proper safety program to identify, evaluate,
9 and correct hazards with the reasonable potential to
10 cause serious injury." Did I read that correctly?

11 A. The first sentence of number two, yes.

12 Q. Do you know whether Alliance Residential had a
13 safety program in any respect?

14 A. Only based on the documents I've been provided,
15 yes, they had some safety program.

16 Q. Okay. What was it?

17 A. Well, I mean it covered several different acts.
18 I mean did it have -- are you speaking more specifically
19 to providing accessible parking or are you just saying
20 generally?

21 Q. I don't know what you're saying 'cause I'm
22 reading opinion number two in your report and it just
23 vaguely says that they knew or should have known that it
24 was necessary to establish and implement a proper safety
25 program. But you don't say anything more in connection

1 with what a proper safety program would have been, should
2 have been, or that they failed to do.

3 A. Well, I disagree with your assessment of my
4 report because the following sentence outlined what it
5 should be. And then the following paragraph is more
6 specific to Alliance Residential's specific Fair Housing
7 policy and in my opinion that they failed to comply with.

8 Q. And that's the paragraph in section two or
9 opinion number two that "... 'Alliance Residential will
10 make every attempt to accommodate a disabled resident.'"
11 Did I read that correctly?

12 A. Yes.

13 Q. And how did they not do that in this case?

14 A. Well, by multiple ways. One, they did not give
15 him a specific accommodation that would be available to
16 him at all times, meaning a specific spot assigned to
17 him.

18 Q. Okay. Let me stop you there 'cause you continue
19 on in that same sentence 'cause you're quoting from it,
20 from the Fair Housing policy that "'... Requests from a
21 disabled resident, such as a reserved parking space near
22 his or her apartment home, should be accommodated as soon
23 as possible.'" Did I read that correctly?

24 A. Yes.

25 Q. You don't have any evidence that Mr. Aguilar

1 made a request for a reserved parking space, do you?

2 A. I don't have information one way or the other at
3 this time.

4 Q. And in connection with your opinion number two
5 concerning hazards, the only hazard that you've
6 identified that played any role in Mr. Aguilar's accident
7 is the curb in the parking space that he decided to park
8 in, correct?

9 MR. McALPINE: Object to the form.

10 A. Uh, no, I disagree with that. I list out a
11 number of issues in my report involving, one, the lack of
12 an assigned space specifically available to Mr. Aguilar;
13 of the space that he frequently utilized, it being of
14 improper design without an access aisle; the fact that
15 their knowledge that he commonly and most often utilized
16 that space due to his disability and the location of his
17 apartment unit, failed to inform him that they were going
18 to be performing maintenance so that either he could make
19 proper plans or they could make proper plans and when
20 they performed that maintenance. So, essentially to
21 inform their tenant with a known disability who they knew
22 parked in that space and relied on that space that they
23 were going to be taking it out of service in my opinion
24 is a serious problem. And then also providing him a
25 alternative while that space is out of service if they're

1 not going to schedule it during a time when it's -- like
2 when he's at work, when he's not needing it, or another
3 planned time with their tenant's schedule.

4 Q. Let's talk about these. The lack of an assigned
5 space. There's nothing as far as statute or standard is
6 concerned that required Alliance Residential to provide
7 him an assigned space, true?

8 MR. McALPINE: Object to form.

9 A. Well, it depends on from what perspective. From
10 ADA and TAS, that's correct. By their own policies it
11 says "... such as a reserved parking space near his or
12 her apartment home ..."

13 Q. No, you left out the first part of the sentence,
14 Mr. English. The sentence says, and it's in your report,
15 "... Requests from a disabled resident ..."

16 A. That's true.

17 Q. Why did you leave that out?

18 A. Well, 'cause at this time I don't know what
19 requests were there, but regardless of whether requests
20 were made, they knew that he was a disabled resident. He
21 had lived there for 10 years and based on their own
22 documents, it seems like there's no question that they
23 knew of his disability and knew that he relied on that
24 parking space near his residence.

25 Q. And this is my question. Okay? There's no

1 statute or standard that required Alliance Residential to
2 provide him with an assigned parking space, true?

3 MR. McALPINE: Object to the form.

4 A. If you're talking about some entity that would
5 come in and fine them or make them do it, then that is
6 correct.

7 Q. And you don't have any evidence that he
8 requested a reserved parking space near his or her
9 apartment, do you?

10 MR. McALPINE: Object to the form.

11 A. Not at this time.

12 Q. And there's nothing as far as a statute or a
13 standard is concerned that required Alliance Residential
14 if there was a -- if there was temporary maintenance
15 being performed to notify Mr. Aguilar that that was being
16 done, correct?

17 MR. McALPINE: Object to form.

18 A. Again, are you speaking from a statutory
19 standpoint where you're meaning they could be fined or
20 forced to do it?

21 Q. I'm talking about any statute whatsoever.

22 A. Not -- there's not a requirement meaning that
23 they're going to be forced to do that or that they're in
24 violation where they're going to be fined, that's
25 correct, but from a -- from a good safety standpoint as a

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1 premises owner of an apartment complex to notify their
2 tenant who they know relies upon such a space, I think
3 that's industry and good practice.

4 Q. But there's no requirement legally for them to
5 do that, correct?

6 MR. McALPINE: Object to the form.

7 A. All I can speak -- I can't speak legally. I'm
8 not an attorney. But from a standpoint of my knowledge
9 of somebody coming in there and forcing them to do that
10 or fining them in some form or fashion, then no.

11 Q. And there's no requirement from a statutory or
12 standard standpoint that for them, Alliance Residential,
13 to have informed him that the parking space was going to
14 be painted on the day of the incident, was there?

15 MR. McALPINE: Object to the form.

16 A. Just so I'm clear, is that somehow different
17 than what your prior question was? I just want to make
18 sure I'm answering it correctly.

19 Q. The question I'm asking you now, there's no
20 statute or standard that required Alliance Residential to
21 inform Mr. Aguilar that they were going to be painting
22 his parking space or the parking space that he intended
23 to use on the day of the incident, is there?

24 MR. McALPINE: Object to the form.

25 A. As I understand your question, that's true.

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1 There's no entity that would require them or force them
2 to do that or fine them for not doing it.

3 Q. And there's no statute or standard that required
4 Alliance Residential to mark some alternative parking
5 space specifically for him because the one he was going
6 to use was being painted.

7 MR. McALPINE: Object to the form.

8 Q. True?

9 A. As far as requiring that, then that's correct.
10 That's in my opinion just good practice to comply with
11 their own policy.

12 Q. Good practice according to you, but you can't
13 cite a standard, a publication, or a statute in support
14 of your opinion, correct?

15 A. I don't agree with that, but I -- you're
16 speaking -- there's two different ways to look at this.
17 One is from a regulatory meaning that some entity,
18 governmental entity has the power to come in there and
19 force them to do something or will require them to do
20 something or fine them for not doing it. There's another
21 aspect. What's required of a good premises owner to
22 accommodate a disabled tenant at their facility so that
23 he can be safe while using and on their premises. So,
24 there's two different things. And I've agreed with you a
25 hundred times that there's no statutory requirement that

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1 some entity is going to come in there and force them to
2 provide an assigned space or force them to inform him
3 they're having maintenance, but in my opinion that's good
4 safe practice under these circumstances as a premises
5 owner with a disabled tenant at their facility.

6 Q. And your opinion is based on what standard,
7 treatise, or publication?

8 A. Well, it's -- I mean it's based on a number of
9 things, one, the Fair Housing Act as far as accommodating
10 residents. And I agree that there's not specific
11 requirements just like building codes don't cover
12 everything in the built environment. Everything in this
13 building is not addressed in the building code, but yet
14 there's established good safe practices that are done
15 even though it may not be in the building codes. And as
16 far as a multifamily apartment premises as far as good
17 safe practice when you're accommodating a disabled
18 resident for their safety, not everything may be
19 published in detail in every -- in the Texas
20 Accessibility Standards, the ADA, or even the Fair
21 Housing Act, but yet it's still safe practice and good
22 practice for that industry in those circumstances.

23 So, yes, that's the reason to -- I speak in
24 number two about having a safety program to identify
25 hazards on your premises under the circumstances,

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1 establish policies to put in place so that way you can
2 have a safe premises for all your tenants whether they're
3 disabled or not. And so that's kind of what number two
4 talks about. It goes beyond (indicating) just what's
5 required by governmental entities as far as safe
6 practice. And so I'm speaking in terms of both.

7 Q. Okay. I understand what you're saying. You're
8 saying there's no law that requires them to do it,
9 there's no statute that requires them to do it despite
10 you citing the statutes and the standards in your report,
11 but that it's just a good safe thing for them to do,
12 right?

13 A. Well, I cite the standards because they failed.
14 Even what they provided was not safe because that -- or I
15 cite the standards as an example and as good practice
16 relative to the safe design providing parking for
17 disabled people. So, that's how I'm utilizing that, not
18 from a statutory standpoint.

19 Q. And I'm -- my question was tell me a standard, a
20 publication, or a treatise that says it's safe practice
21 for Mr. Aguilar to have been informed that a handicapped
22 parking space was being temporarily taken out of use
23 because it was being painted.

24 A. Again, that's -- it's not discussed in the
25 references that I've spoken of.

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1 Q. Okay. So, there are none.

2 A. As far as --

3 MR. McALPINE: Objection, form.

4 A. As far as you're speaking of in that specific
5 detail in these documents, then no.

6 Q. And in none of the publications that you've
7 referenced as an attachment to your report, it's not --
8 it's in none of those either, right?

9 A. As far as requiring them to inform him of doing
10 maintenance --

11 Q. Yes.

12 A. -- on the parking spot?

13 Q. Yes.

14 A. That's correct.

15 Q. Or requiring Alliance Residential to provide
16 another specific parking space for him because the one he
17 was using was being painted when they had others
18 available at the time.

19 MR. McALPINE: Object to the form.

20 A. Well, I would say that your last part of that
21 question when others were available at the time is an
22 assumption on your part.

23 Q. When others could have been available at the
24 time.

25 A. But there's no evidence that others were

1 and also partially on their own policy.

2 Q. Based on a request by him, which you don't have
3 any evidence of, right?

4 A. In my opinion it doesn't matter whether he
5 requested it. They had knowledge of his disability. So,
6 they should be wanting to supply -- accommodate him
7 regardless of whether he makes a specific written request
8 or not.

9 Q. And he said that he had been at that apartment
10 complex for 10 years and had only parked in other
11 handicapped parking spaces, what, 10 to 15 times?

12 A. I think he said up to 20. That was his
13 estimate.

14 Q. So, if that's true, then there was no reason to
15 have to provide any other handicapped parking space
16 specifically for him, correct?

17 A. Well, except for the fact that 1 of those 20
18 times led to him being paralyzed.

19 Q. Well, no, it led to him deciding to park in a
20 nonhandicapped parking space when others could have been
21 available, right?

22 A. Well, that's a bit -- I'd say that's a major
23 assumption when their evidence states that if one was
24 available, he would have utilized it.

25 Q. Did you ever at any point ask the lawyer, the

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1 available at the time.

2 Q. There's no evidence that others weren't
3 available either.

4 MR. McALPINE: Object to the side bar.

5 A. Well, I disagree --

6 Q. Yes.

7 A. -- 'cause there is some evidence from Mr.
8 Aguilar's testimony that others were not available 'cause
9 otherwise he said he would have used them.

10 Q. But then he said he didn't know.

11 A. Well, that's correct, but he said that he didn't
12 remember two years later, but you can't negate his other
13 testimony or ignore it.

14 Q. You also write in your report in opinion number
15 four that "... Alliance ... failed to properly install
16 signage to reserve the space specifically for their
17 tenant, Mr. Aguilar, such as," quote, Reserved Handicap
18 Parking - Apartment 12108 only, unquote. Did I read that
19 correctly?

20 A. As far as the portion that you read, yes.

21 Q. There's no statute or standard, no publication
22 or treatise that you can cite to us to support that
23 requirement, true?

24 A. No. That's based on good practice and the
25 practice I've seen in place at other apartment complexes,

1 only human being you spoke to in connection with your
2 report, to talk to Mr. Aguilar?

3 A. Not at this time, no.

4 Q. You didn't? Not at this time. Before you
5 issued your report, did you ever ask the lawyer to talk
6 to Mr. Aguilar about what actually happened?

7 A. Uh, not that I recall, but I don't recall all of
8 our conversations.

9 Q. And there's no standard, statute, publication,
10 or treatise that provides a temporary alternative
11 reserved space was required for Mr. Aguilar since the
12 parking space on the date of the incident was being
13 painted, correct?

14 A. Not in those specific terms, no.

15 Q. There's no statute or standard, treatise or
16 publication that you can cite to us or the court where a
17 temporary alternative reserved space for Mr. Aguilar was
18 required because the handicapped parking space on the
19 date of the accident was being painted, correct?

20 A. I'm sorry, you may have to repeat that question.

21 Q. Let me repeat it again. Is there any standard,
22 publication, treatise, or statute that you can cite that
23 required a temporary alternative reserved space be
24 provided to Mr. Aguilar when the parking space on the
25 date of the incident was being painted?

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1 A. Not --
 2 Q. Or because the parking space on the date of the
 3 incident was being painted.
 4 A. Not by statute, no.
 5 Q. Or standard?
 6 A. Not specifically, no.
 7 Q. Or treatise?
 8 A. I will say that the documents that you're
 9 referencing that I have referenced are relative to
 10 general handicapped parking spaces for the general
 11 public, not a specific accommodation for a specific
 12 tenant. So, we have a little bit different circumstances
 13 than what those standards were written. So, again just
 14 like building codes, they may not cover every detail.
 15 So, therefore, that's the importance of having a safety
 16 program to identify hazards, evaluate them, and make
 17 proper choices for the safety of the people who are
 18 utilizing your premises. So, again not everything's
 19 going to be written in the standards. Sometimes you
 20 actually have to think beyond them.
 21 Q. And there's no treatise or publication that you
 22 can cite to us that provides when a parking space, a
 23 handicapped parking space is being painted, the apartment
 24 complex must provide a temporary alternative reserved
 25 space for the tenant.

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1 A. That's correct. Unless it will be out of
 2 service for an extended period of time.
 3 Q. And then you write in opinion number six that
 4 "... Alliance Residential failed to meet the standard of
 5 care necessary to provide a reasonably safe handicap
 6 parking accommodation for the disabled tenant ..." Did I
 7 read that correctly?
 8 A. As discussed within this report, that's correct.
 9 Q. And the standard of care is not from a statute,
 10 any ANSI standard or other standard, publication or
 11 treatise, right?
 12 A. I disagree with that statement. Part of it is
 13 and part of it is not.
 14 Q. What part is?
 15 A. The specific requirements for a safe accessible
 16 parking space.
 17 Q. You're talking about the 60-inch access aisle?
 18 A. Yes.
 19 Q. Which didn't cause him to fall on the day of the
 20 accident, right?
 21 MR. McALPINE: Object to form.
 22 A. I disagree with that.
 23 Q. The lack of a 60-inch access aisle didn't cause
 24 Mr. Aguilar to fall, did it?
 25 MR. McALPINE: Object to the form.

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1 A. In my opinion that is a causative factor.
 2 Q. A 60-inch access aisle wasn't required in the
 3 nonhandicapped parking space where he decided to park,
 4 correct?
 5 MR. McALPINE: Object to the form.
 6 A. Well, there's more than one causative factor. I
 7 mean the first causative factor is the fact that the --
 8 they didn't provide a parking space for him that had an
 9 access aisle, period. The one they did provide was not
 10 available which led to him parking where he did. That
 11 did not have adequate space for him to exit his vehicle
 12 with a walker which ultimately led to him falling and
 13 becoming injured. So, again, they all tie in as far as
 14 being positive factors of his particular fall.
 15 Q. But none of it ties in if there were in fact
 16 other handicapped parking spaces available for him on the
 17 day of the incident, right?
 18 A. Well, again, the ones I viewed there was only
 19 one that actually had an access aisle which was one that
 20 tenants were not supposed to use and that was at the
 21 leasing office. So, he would not have been in any better
 22 situation other than not having to deal with the curb if
 23 he had parked in the one if it was available that was
 24 further down at a different building.
 25 Q. So, he was in a much better situation because

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1 there would have been no curb, right?
 2 A. That would have been a safer situation than what
 3 he was at the time, but in my opinion it still was not
 4 safe because it didn't have an access aisle.
 5 Q. I'm going to ask you if you would identify these
 6 for me. We have some photographs that were produced to
 7 us. These are Aguilar 203 through 205, Aguilar 319, and
 8 then a stack of photographs that have no Bates numbers.
 9 So we can break these down for us, of the stack that have
 10 no Bates numbers photographs that you took?
 11 MR. McALPINE: Can I see these real quick?
 12 THE WITNESS: (Witness complies.)
 13 Q. And these were provided to us in connection with
 14 the subpoena.
 15 MR. McALPINE: Thank you. Here you go.
 16 A. All right. This stack that you handed me
 17 appears to be the photographs that I took during my
 18 inspection.
 19 MR. HASSINGER: Okay. If we could attach
 20 those as -- all of those as Exhibit 5?
 21 (Whereupon, Exhibit No. 5 was marked.)
 22 Q. I'll show you another stack of colored
 23 photographs. Are these additional photos you took during
 24 your inspection?
 25 A. They appear to be photographs I took, but

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1 whether they're duplicates or additional to what was
2 marked as three, I don't -- I'm not sure.

3 Q. It's marked as five. Why don't you --

4 A. Oh, five, I'm sorry.

5 Q. -- just include them all.

6 MR. HASSINGER: Is that okay, Kiernan, one
7 packet, all of those as Exhibit 5?

8 Q. The first one in Exhibit 5, which parking space
9 is this (pointing)?

10 A. That is the parking space in front of or
11 generally serving the leasing office.

12 MR. HASSINGER: Can we just number them at
13 the bottom here?

14 MR. McALPINE: Be my guest.

15 Q. It's numbered at the bottom. There's 1 through
16 28. Number 3 of Exhibit 5, which parking space is this
17 (pointing)?

18 A. That is the parking space nearest his particular
19 apartment unit that my understanding is he normally
20 parked in.

21 Q. And this is, uh, number nine. What parking
22 space is this, this handicapped parking space
23 (indicating)?

24 A. In the nearest view in the photograph, it would
25 be the one that was also shown in whatever that previous

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1 number, number three is. It's the one that's nearest his
2 apartment unit.

3 Q. And then No. 11 (indicating)?

4 A. That's the same parking space.

5 Q. Number 15 (indicating)?

6 A. Uh, it's focusing on the parking space that I
7 understood that he parked in at the time of the incident
8 that would be across the driveway from the parking --
9 from the space that we just discussed in the previous
10 photographs.

11 Q. And No. 16 (indicating), that's the handicapped
12 parking space?

13 A. Yes. That camera view is directed more toward
14 the handicapped parking space at the leasing office.

15 Q. So, if we were to look at photograph No. 16, to
16 the right of the photograph is where he actually parked
17 (pointing). Yes?

18 A. Yes.

19 Q. And his testimony is that he saw the gentleman
20 painting the parking space, the handicapped parking space
21 when he drove in which would have -- which would be to
22 the right (pointing) or the bottom of this photograph
23 (pointing), photograph 16. Yes?

24 A. Yes, it would be to the bottom in that
25 photograph.

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1 Q. Out of view (pointing).

2 A. Yes.

3 Q. And his testimony was that he simply looked to
4 the left and decided to park in this parking space at the
5 top right (pointing) of this photograph because it was
6 available. Yes?

7 MR. McALPINE: Object to the form.

8 A. He said he did look to the left and the parking
9 space to the left, but as far as all of his testimony,
10 I -- I can't regurgitate that.

11 Q. His testimony was that he simply looked to the
12 left, saw that parking space available, and decided to
13 park there, true?

14 A. I don't know if that's an accurate -- accurate
15 reflection of all of his testimony, but in a general
16 sense that's what ultimately happened is he did park
17 there.

18 Q. You read his testimony where he's said that he
19 didn't have a conversation with the painting contractor
20 in any fashion?

21 A. Yes.

22 Q. You read his testimony where he said he never
23 even rolled down his window to speak to the painting
24 contractor?

25 A. I read all of his testimony. I didn't commit it

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1 to memory. I know that he said he didn't speak to him.
2 I don't recall specifically about the window aspect of
3 it.

4 Q. And the painting contractor never told him where
5 to park, did he?

6 MR. McALPINE: Object to the form.

7 A. Well, he -- I mean his testimony is that he did
8 not talk to him. So, I would say that's correct.

9 Q. He testified on pages 28 to 29 that when he
10 pulled in and saw the space he wanted to park in was
11 being painted, he looked over to his left and saw that
12 one was available. So, he decided to park there. Do you
13 see that?

14 MR. McALPINE: What's the page and line?

15 Q. Pages 28 and 29. Do you see that, Mr. English?

16 A. I see where you're reading from, yes.

17 Q. Okay. And the -- if we're again looking at No.
18 16 to Exhibit 5, where he parked is in the top right
19 (pointing) and another handicapped parking space is to
20 the left here (pointing) by the leasing office, correct?

21 A. Yes.

22 Q. Okay. I'm going to finish up, Mr. English. One
23 other thing. In connection with the documents that you
24 gave us, you have a, uh, a sketch that shows some
25 measurements that you took; is that right?

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1 A. Yes.
 2 MR. HASSINGER: If you'd attach that as
 3 Exhibit 6?
 4 Q. Is this it (indicating)?
 5 A. I think that's the second page to it.
 6 Q. Okay. It's two pages.
 7 A. Yes.
 8 Q. Do you have any photographs whatsoever that show
 9 the tape measure you used and the actual measurements
 10 that you took?
 11 (Whereupon, Exhibit No. 6 was marked.)
 12 A. The majority of these measurements, if not all
 13 of them, were not used with a traditional tape measure.
 14 It was a digital distance tool.
 15 Q. And is that one that you roll on the ground or
 16 you shoot from point to point?
 17 A. It's -- you shoot it from point to point. It's
 18 laser.
 19 Q. What's it called?
 20 A. I have two of them and I believe I used the
 21 Bosch. I don't know if I have the model number committed
 22 to memory, but I can get that information, but it's a
 23 distance measurer. I could probably find it on the web.
 24 Q. So, if you wanted to measure the parking space
 25 where he actually parked, how do you physically -- how

1 access aisle.
 2 Q. In connection with what space?
 3 A. Oh, the, uh -- in front of the -- the one
 4 nearest the leasing office, the access aisle for the
 5 handicapped parking at the leasing office.
 6 Q. And then this that says 16 feet here, what is
 7 that?
 8 A. The distance across what I refer to as a parking
 9 lot island or the grassy area between the space that he
 10 ultimately parked in and then the access aisle for the
 11 handicapped parking space of the leasing office.
 12 Q. And then this one in the top right is the space
 13 he actually parked in (pointing)?
 14 A. Yes.
 15 Q. That's not measured?
 16 A. It actually is. I had started writing
 17 measurements on a different piece of paper and then I
 18 switched to my book. And so the -- that space (pointing)
 19 was -- I measured from the line as 91 and 9/16th's
 20 inches. The line itself is four inches. So, I should
 21 have added even to that. It is a mistake in my report.
 22 I should have added two inches 'cause it should be to the
 23 centerline of the, uh, actual marked line.
 24 Q. What are you referring to?
 25 A. What am I referring to?

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1 did you physically do that with that tool that you have
 2 or you were using?
 3 A. Uh, his foot -- which parking space were you
 4 referring? Either?
 5 Q. Any of them?
 6 A. Well, as far as the width, I measured from the
 7 interior (indicating) of the line --
 8 Q. Can I interrupt you on purpose? I'm talking
 9 about physically how did you do that? Are there things
 10 you lay down and shoot from point to point?
 11 A. It could be depending on if there's something --
 12 like I could use -- if I'm getting the width, I can use
 13 the curb as the end point. So, that would be one. If
 14 there's not, then I have a little tool that I can sit
 15 down like a little tripod (indicating) that I would use
 16 that as the measurement.
 17 Q. What did you do?
 18 A. I used the curb for some of the measurements and
 19 other of the measurements I used my little tripod tool to
 20 get it.
 21 Q. So, if we're looking at Exhibit 6, what are the
 22 spaces here (pointing)? Can you identify these for us?
 23 If we go to the top left, what space is that (pointing)?
 24 A. That's actually indicating the width of the
 25 access aisle from the curb. The crosshatch area is the

1 Q. Right now. To those notes?
 2 A. Those handwritten notes, yes.
 3 Q. We didn't receive those. Did you give those,
 4 produce those to us?
 5 A. Uh, I'm not sure. If I didn't, it was
 6 oversight. I intended to.
 7 Q. Can I see --
 8 A. Sure.
 9 Q. -- those if you don't mind?
 10 A. (Witness complies.) You know, I meant to
 11 transfer those on these other graphical or graphic paper
 12 note, but I guess I failed to do that when I returned to
 13 the office.
 14 Q. It says: From SI. What's SI?
 15 A. Let me -- let me see how I have it.
 16 MR. McALPINE: You know --
 17 A. Oh --
 18 MR. McALPINE: I'm sorry. Go ahead.
 19 A. SI stands for site inspection.
 20 MR. McALPINE: Let me go ahead and copy that
 21 before we label it.
 22 MR. HASSINGER: I'm not going to label it,
 23 the original.
 24 MR. McALPINE: Well, I'm just going to give
 25 you a copy.

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1 Q. Reserve HC space (pointing), what is that?
 2 A. Let me look -- can I look at that real quickly?
 3 Uh, that is -- would be -- I'm referring to the one that
 4 he normally would park in that's nearest his apartment
 5 unit.
 6 Q. What's HC?
 7 A. A short acronym for handicapped.
 8 Q. And you have the width as seven feet, eight
 9 inches.
 10 A. Yes.
 11 Q. How much is seven feet, eight inches?
 12 A. Ninety-two inches.
 13 Q. That's the space that he normally parked in?
 14 A. Wait, I'm sorry. Let me -- let me make sure I'm
 15 looking at it. Yes, that's correct.
 16 Q. And you measured it as being 92 inches?
 17 A. Yes, from the interior edge of the white line to
 18 the curb. And that's also measured in approximately the
 19 area where an individual would be entering and exiting
 20 their vehicle.
 21 Q. And that should be another measurement you're
 22 saying?
 23 A. Well, to get the full width I should have added
 24 another two inches 'cause there was a four-inch wide line
 25 to get to the centerline. So, it technically would be 94

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1 inches is what I would consider the full width of that
 2 parking space.
 3 Q. And then you have space where parked 7 feet 7
 4 and 9/16th's inches which equals 91 and 9/16th's inches;
 5 is that right?
 6 A. Yes.
 7 Q. Is that an accurate measurement?
 8 A. Yes.
 9 Q. Have you looked at Mr. DiNicola's
 10 measurements --
 11 A. Yes.
 12 Q. -- where he actually lays down a tape measure?
 13 A. Yes.
 14 Q. Do you disagree with any of his measurements?
 15 A. Well, from what aspect, that his tool's not
 16 right or as far as the location that he measured or what
 17 aspect?
 18 Q. Any aspect that he's not measuring properly in
 19 some or that the measurements are wrong.
 20 A. Uh, yes, I do disagree with his measurements.
 21 Q. Okay. We're going to talk about it in a second.
 22 You then have ANSI, ADA, TAS required width 96 inches,
 23 access aisle 60 inches, and then HUD, Housing and Urban
 24 Development; is that right?
 25 A. Yes.

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1 MR. HASSINGER: Can we make a copy of this
 2 and attach this as Exhibit 7?
 3 (Whereupon, Exhibit No. 7 was marked.)
 4 Q. Do you have any other notes or anything else
 5 that you didn't give to us in connection with the
 6 subpoena that we issued?
 7 A. Well, I thought I had provided everything. If I
 8 didn't provide those, then I guess it was oversight, but
 9 apparently you have other inspection notes. I think
 10 that's the only handwritten items I have.
 11 Q. Do you have any other inspection notes?
 12 A. No, I don't. Those are the only two things.
 13 Q. Mr. DiNicola in his report writes that the
 14 accessible space was 86 -- 97 inches wide, 8 feet 1 inch
 15 wide. Do you see that?
 16 A. Yes.
 17 Q. Do you disagree with that measurement?
 18 A. Uh, well, as far as the 97 inches, yes, because
 19 that's to the far end of the line (indicating). So, for
 20 example, if I was going to be measuring the adjacent
 21 parking spot and if I went to the exterior of the line,
 22 then I'm essentially counting four inches twice. So, it
 23 should really be to the centerline 'cause half of that
 24 line is the adjacent space. I don't know if that makes
 25 sense.

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1 Q. I understand what you're saying, but what tells
 2 you as far as the standard is concerned or a statute that
 3 you're supposed to measure to the middle of the white
 4 line and not the edge?
 5 A. Okay. Then what edge do you measure it to? I
 6 guess I would have to use what would be good practice and
 7 that would be to the centerline.
 8 Q. I'm just asking you is there a statute or a
 9 standard that tells you, Mr. English, only measure to the
 10 middle of the white line as far as measuring the width of
 11 a parking space is concerned and measuring the width of a
 12 parking space?
 13 A. It doesn't specify, but it wouldn't be -- it
 14 wouldn't make sense because, for example, in some
 15 situations you may have a parking space and an access
 16 aisle that's shared by another accessible parking space
 17 on the other side of the access aisle. So, by measuring
 18 according to Mr. DiNicola's method, you would be
 19 essentially adding an extra eight inches to that space
 20 that doesn't really exist because you're measuring the
 21 four-inch line twice. So, you're not -- you don't really
 22 have 96, 60, and 96 because you measured 8 inches twice.
 23 Q. He has on page six of his -- and I understand
 24 that's your opinion, but you can't tell me that there's a
 25 standard or a statute that tells you how to do it, right?

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1 It's just the way you do it.

2 A. No, it's -- I guess it's just you can't say
3 there's 60 inches between here and there (indicating) if
4 there's actually not. And so you have to count the
5 available space. You can't count 4 inches twice and say,
6 okay, well, I realize I measured 4 inches twice, but it's
7 60 inches if I say that I'm going to duplicate 4 inches.
8 So, it's really just by I guess good engineering is that
9 you don't -- you can't say it's this wide if you count a
10 measurement twice. So, by in practice and really this is
11 pretty standard in engineering and architecture is that
12 you measure to the centerline, whether it be measuring
13 between studs or whatever. So -- but it does not specify
14 how to measure it, but I'm just saying from practice in
15 engineering and architecture, it would be to the
16 centerline.

17 Q. On page six of his report he writes that the
18 space used by Mr. Aguilar was eight feet wide. Do you
19 disagree with that or agree with it?

20 A. Well, I disagree to the extent that he measured
21 it differently than what I would and what I think is
22 proper practice.

23 Q. Because of the centerline issue?

24 A. Yes, and also the fact that his tape measure is
25 not straight which can affect your measurements, and also

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1 he measured at the very tail end of the parking space
2 where there is a curb flare. So -- and it's also not
3 where people exit their cars unless they're exiting from
4 the trunk. So, I wouldn't consider that to be a very
5 viable place to put a measurement in my opinion, but
6 that's just how I try and conduct my inspections no
7 matter who hires me to do it.

8 Q. You don't know where his tape measure starts in
9 the bottom left photo, do you?

10 A. Uh, well, it shows, yeah, on -- you're speaking
11 of page six? Am I looking at the right photograph?

12 Q. Yes.

13 A. Yes, it starts at the curb.

14 Q. Do you know if it's touching the curb or out
15 further?

16 A. I mean I can't tell from the photograph. I
17 would say it's good practice if you're trying to measure
18 the width that it would be touching the curb.

19 Q. If you can turn with me to page nine of his
20 report. He writes that the ADA only applies to public
21 and common used spaces available to the general public.
22 Do you agree with that?

23 MR. McALPINE: Wait, which page?

24 MR. HASSINGER: Nine.

25 MR. McALPINE: Sorry.

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1 A. Or is he speaking to the, uh -- to apartment
2 complexes or in what sense? I mean from a statutory
3 standpoint, then, yes, it's to public -- places of public
4 accommodation and commercial facilities. If that's what
5 he's referring to, then that's correct as far as from a
6 statutory standpoint.

7 Q. Page 11 of his report at the bottom he writes
8 that the ADA did not require accessible parking spaces
9 to be assigned even when the other parking spaces were
10 assigned. Do you agree with that?

11 A. (Witness reading.) As far as the ADA requiring
12 accessible -- I'm just trying to understand what he's
13 trying to say here and it's not overly clear. If he's
14 speaking of as far as being assigned to a specific
15 person, then he's correct. The ADA does not require that
16 if that's what he's trying to say.

17 Q. On page 14 of his report he writes that
18 residential units were not covered by TAS, the Texas
19 Accessibility Standards. Do you agree with that?

20 A. Speaking from a statutory standpoint, that's
21 what we've already discussed, yes.

22 Q. On page 15 of his report he writes that the Fair
23 Housing Act does not address maintenance and that Section
24 36.211(b) of the ADA states that interruptions due to
25 maintenance were not prohibited. Do you agree with that?

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1 A. Reasonable interruptions, that's correct.

2 Q. And in performing temporary maintenance to a
3 parking space by painting the parking space is a
4 reasonable interruption, is it not?

5 A. Uh, well, that's necessary maintenance at times.
6 So, depending on the length of time, then I would say
7 yes.

8 Q. And you don't have any evidence as far as this
9 case is concerned that the interruption was unreasonable
10 as far as the length of time is concerned, do you?

11 A. No, but I don't know exactly how much time was
12 spent parking with it in progress.

13 Q. On page 19 of his report he writes in the middle
14 that the ADA and TAS do not apply to apartment complexes
15 Apartment complexes are covered by the Fair Housing Act.
16 Do you agree with that?

17 A. Not fully, no.

18 Q. Not fully in the sense of you agree that there's
19 no statutory requirement that the apartment complexes
20 apply as far as -- or comply with ADA and TAS except for
21 near the leasing office, for example, where a public
22 accommodation is present.

23 A. Yes, that's correct relative to ADA and TAS.

24 Q. On page 20 of his report he writes that the Fair
25 Housing Act has no reference to marking accessible spaces

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1 to individuals. Do you agree with that?

2 A. If he's referring to -- for a specific
3 individual, then that's correct.

4 Q. Do you agree that Mr. Aguilar could have backed
5 into the space he chose to park in to avoid the curb?

6 A. Uh, well, you'd have to ask Mr. Aguilar what he
7 feels comfortable in his abilities with backing into an
8 eight foot wide parking space. I can't answer that. Is
9 it physically possible? Yes. Whether he's comfortable
10 doing that, that's a question for him.

11 Q. Another option he would have had on the day of
12 the incident was to park in a nonhandicapped parking
13 space that had no curb to the left.

14 A. If one was available.

15 Q. That's all I have. Thank you, Mr. English.
16 Appreciate your time today.

17 MR. McALPINE: Can we have a 10-minute
18 break?

19 (Short recess)

20 MR. McALPINE: All right. This is Kiernan
21 McAlpine, attorney for plaintiff, Gustavo Aguilar. I've
22 been advised that Mr. Hassinger has a 3:35 approximately
23 flight and I'm going to ask a few number of questions
24 than I had originally intended so that he can make that
25 time commitment.

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EXAMINATION

2 BY MR. McALPINE:

3 Q. All right. Mr. English, good afternoon. It is
4 now afternoon.

5 A. Good afternoon.

6 Q. I wanted to follow up on one question that was
7 asked of you earlier which is about the reasonableness of
8 maintenance and disruptions based on maintenance. Do you
9 think that the disruption to Mr. Aguilar's access to the
10 space that he was accustomed to was reasonable or
11 unreasonable in this case?

12 MR. HASSINGER: Objection, form.

13 A. Given the circumstances in this case, in my
14 opinion it was unreasonable.

15 Q. Why is -- why do you think that it was
16 unreasonable?

17 A. Well, because that was the space that was
18 nearest his unit that he was known to routinely use, and
19 given the environment being a long-term tenant at this
20 apartment complex, one, it would have been very easy to
21 notify him of the maintenance and to schedule around his
22 schedule when he doesn't need the space considering he
23 would teach most of the day or to provide even an
24 adjacent space temporarily by marking it with the cones
25 so that way if it needs to be done when he needs it, it

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1 would be -- they could -- it would be an available space.
2 So, one, there was reasonable alternatives to just taking
3 the space that he uses out of service. And given the
4 circumstances of his needs, in my opinion I think it's
5 unreasonable.

6 Q. Are those things that you think that Alliance
7 could have done instead?

8 A. Yes.

9 Q. Do you think that if Alliance had done those
10 things, this accident would or would not have happened?

11 MR. HASSINGER: Objection to the form.

12 A. In my opinion it would have prevented this
13 incident or at least had the higher likelihood of
14 preventing the incident.

15 Q. What is the economic burden in your assessment
16 posed to Alliance or similarly situated property managers
17 in asking that they notify their tenants of maintenance
18 such as restriping the parking lot?

19 A. I'd say it's a very minimal burden, if any, and
20 it's commonly done on a wide range of issues, whether it
21 be from maintenance that needs to be done inside their
22 unit, notifying them of that. Many times they have
23 little clips at the doors that they will stick a
24 notification there on the door, or there's multiple ways
25 that the complexes go about notifying tenants. So, I'd

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1 say it's a common practice and a very limited or minimal
2 effort to do that.

3 Q. In your opinion is the requirement that they
4 notify tenants of disruption to, for instance,
5 accommodated spaces an extension of, for example, the TAS
6 or, excuse me, the Fair Housing Act, an ANSI standard
7 that would require them to provide the accommodated space
8 to begin with?

9 MR. HASSINGER: Objection, norm.

10 Q. I'll withdraw that question. That didn't come
11 out right. Are you aware that Mr. DiNicola's argument is
12 that they don't have to notify their tenants?

13 A. Yes.

14 Q. So, you're aware of that being his contention?

15 MR. HASSINGER: Objection, leading.

16 A. That's what I got out of his report, yes, one of
17 his opinions.

18 Q. As a safety engineer do you find Mr. DiNicola's
19 argument that they aren't expressly required to notify
20 persuasive?

21 A. I do not, no. I differ in that opinion.

22 Q. Why are you not persuaded by that argument?

23 A. Well, I would say it seems to me that

24 Mr. DiNicola is strictly speaking from a statutory
25 requirement standpoint what is somebody forced to do by

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1 some entity or be at risk for being penalized with a fine
2 or whatever it may be if they don't comply with that
3 versus I'm looking at it beyond what's required by
4 statute of what would be good reasonable practice for the
5 safety of their tenant.

6 Q. Do you think that it would have been reasonable
7 for Alliance to coordinate with Mr. Aguilar --

8 A. My opinion --

9 Q. -- in regards to the maintenance?

10 A. In my opinion, yes.

11 Q. What's your assessment of the economic burden
12 that this would pose on Alliance?

13 A. As far as the notification?

14 Q. Coordination with him.

15 MR. HASSINGER: Objection, form.

16 A. I would say virtually none, I mean especially
17 considering his unit is directly across the driveway from
18 the leasing office.

19 Q. Was it foreseeable that Mr. Aguilar or another
20 tenant could be seriously injured if they did not take
21 these steps?

22 MR. HASSINGER: Objection, form.

23 A. In my opinion, yes.

24 Q. Why was it foreseeable?

25 A. Well, they -- they had the knowledge of his

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1 disability, the knowledge that he relied on that space
2 for easy access and safe access into his apartment unit,
3 and had knowledge of -- that it was going to essentially
4 be taken out of service and did not provide reasonable
5 alternatives or even notified Mr. Aguilar of such -- of
6 such condition.

7 Q. Will you agree or disagree that a reasonably
8 prudent premises owner will not needlessly endanger the
9 public?

10 MR. HASSINGER: Objection, form.

11 A. I agree with that statement, yes.

12 Q. Would you agree or disagree that, generally
13 speaking, the second safest option causes needless
14 danger?

15 MR. HASSINGER: Objection, form.

16 A. What are you referring to as the second safest
17 option?

18 Q. Well, there can be -- is it true that there can
19 be more than one way to -- in any situation there can be
20 more than one course of action that you can take?

21 MR. HASSINGER: Objection, form.

22 A. That's true.

23 Q. An option -- well, let me just move on from
24 there. How would you characterize your differences of
25 opinion at the most general level with Mr. DiNicola's

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1 report?

2 A. From the most general level, I'm looking at it
3 as a -- what a reasonable apartment premises owner and
4 manager should do for the safety of their tenants,
5 regardless of what a particular standard or code or
6 regulation may require them to do, but what would be good
7 prudent practice where Mr. DiNicola is -- generally
8 appears to be strictly looking at what's statutorily
9 required of the apartment complex, meaning that they're
10 forced to do to be in -- to not get in trouble or
11 penalized in some form or fashion is the most general
12 difference between our analysis, you know. And then
13 beyond that is, you know, as far as just evaluating the
14 handicapped parking space itself, he speaks to the terms
15 of it being 8-foot wide, but yet ignores the information
16 even in his own report that it should also have a 60-inch
17 access aisle. That's a clear violation of the, uh, of
18 the housing code and also of which references ANSI A117.1
19 and there's also a violation of authoritative references
20 such as ADA and the Texas Accessibility Standards. You
21 know, it's just from a straightforward difference in our
22 opinions, but I would say that's the most general areas
23 that we differ.

24 Q. Are you a safety engineer?

25 A. Yes.

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1 Q. How would you characterize safety engineering at
2 the most general level?

3 A. It's really applying basic scientific and
4 technical principles to eliminate or minimize hazards
5 that may cause injury to people, damage to equipment or
6 facilities, even environmental damage through a basic
7 process of hazard identification, evaluation, and then
8 control.

9 Q. As a safety engineer are you able to appreciate
10 a distinction between reasonable and prudent practice and
11 minimum statutory requirements?

12 A. Yes.

13 Q. Is it your opinion or is it not that minimum
14 statutory requirements in many cases do not rise to the
15 level of reasonable and prudent practice?

16 MR. HASSINGER: Objection, form, leading.

17 A. In many circumstances I would agree with that,
18 yes.

19 Q. Is it important to prevent falls?

20 A. Yes.

21 Q. Why is that important?

22 A. Well, falls themselves are the leading cause of
23 injury, unintentional injury in the United States based
24 on statistics taken in why people go to the emergency
25 room. It's by far the leading cause, almost double the

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1 second leading cause, which is automobile accidents,
2 which a lot of people find that surprising. So, if
3 you're looking about if you're concerned with how do I
4 prevent injury with my facility, well, that's where you
5 want to start because that's going to be more often than
6 not your leading cause of injury. And by just starting
7 with addressing falls is a critical aspect of any safety
8 program, especially from a premises safety standpoint.

9 Q. In what type of a circumstance would you
10 incorporate testing into your methodology?

11 A. Anytime it's required to properly evaluate
12 the -- the circumstances surrounding a particular event.
13 So, for example, if it was a slip and fall, then I might
14 test the surface for coefficient of friction or slip
15 resistance with an instrument. Other times, say if it
16 was a scaffold collapse, I may -- and there may be a
17 defect with the metal -- I may want to test the strength
18 of the metals, but ... So, if it's necessary as part of
19 the evaluation, then testing needs to be done, but not
20 all evaluations require testing. I mean a lot such as in
21 this case, you know, really you take the measurements,
22 document the scene, and that's what you need to evaluate
23 it in comparison to various types of requirements. So,
24 it does not require any specific more technical testing.

25 Q. How do you define ergonomics?

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1 A. I kind of view human factors of ergonomics as
2 one. Some people try and separate them, but it's really
3 the study of human characteristics and human tendencies,
4 and based on the understanding of those characteristics
5 and tendencies designing products, facilities, equipment,
6 items that people use and deal with in their environments
7 so that it's safe and efficient for their use. So, for
8 example, you know, even chairs, you have ergonomic chairs
9 and chairs that aren't so ergonomic. So, eventually
10 you're taking your knowledge of human characteristics,
11 which is their physical characteristics, their size,
12 their strengths, things like that, and also their
13 tendencies, how they utilize those chairs and you take
14 that and say how can I design a chair that's ergonomic to
15 be able to fit that person and make it comfortable for
16 them to sit in over a -- especially over a period of time
17 so that way it doesn't lead to discomfort or injuries?

18 So, that's like a simple common example of
19 human factors of ergonomics, but that extends well beyond
20 that into the walking process of figuring how people
21 interact in various environments and what their
22 tendencies are in situations like that. So, it's really
23 applied very broadly in my words as a safety engineer as
24 something that's very important.

25 Q. Do principles of ergonomics have anything to say

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1 about the curb that Mr. Aguilar was standing on?

2 MR. HASSINGER: Objection, form.

3 A. Yes.

4 Q. What are those?

5 A. Well, I mean just as far as how a curb interacts
6 within a person's environment as they're entering and
7 exiting a car in a parking lot in this situation. I mean
8 curbs can play a role in other situations from a fall
9 standpoint as well, but to the degree that based on just
10 again human characteristics and environmental
11 characteristics such as the dimensions of people and
12 dimensions of walkers and wheelchairs, how much space is
13 needed for people to safely enter and exit their
14 vehicles. And really based on that ergonomic type of
15 data that's the reason we have or these standards have
16 developed the need for access aisles as a necessary part
17 of providing accessible parking for people with
18 disabilities because they need that extra space based on
19 their -- the requirements to enter and exit their cars
20 with their disabilities or with necessary mobility
21 equipment such as walkers or wheelchairs or whatever it
22 may be.

23 Q. Does the FHA or ADA or TAS specify what side of
24 a vehicle an access aisle needs to be on?

25 A. Uh, no, it does not specify the side. More

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1 often than not, if there's only one space it's typically
2 on the driver's side. If there's two -- if there's two
3 handicapped parking spaces, they can share an access
4 aisle. So, there's definitely figures that are listed in
5 those documents that illustrate that, but as far as where
6 it actually specifies that to be on one side or the
7 other, it does not.

8 Q. More likely than not, in all probability had
9 there been an access aisle adjacent to the space
10 Mr. Aguilar parked in immediately prior to the incident,
11 where would the access aisle be relative to that space?

12 MR. HASSINGER: Objection, form.

13 A. And you're speaking, just to clarify, the space
14 that he ended up parking in?

15 Q. Correct.

16 MR. HASSINGER: Objection, form.

17 A. Given the direction of that head in parking
18 which is the most common direction people pull into
19 parking spaces (indicating) is to go in forward, it would
20 be to the driver's side. So, it would be to the left.

21 Q. Is that or is that not where the curb was
22 located that he was standing on?

23 A. That is in this situation the same side that the
24 curb was on, yes.

25 Q. Did you perform a site visit in this case?

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1 A. Yes.

2 Q. Did you physically examine the location of the
3 parking space that he parked in on the day of his injury?

4 A. Yes.

5 Q. In your assessment of that space was the curb he
6 stood on visible to Mr. Aguilar before he pulled in to
7 park there?

8 MR. HASSINGER: Objection, form.

9 A. I would say it was likely visible, yes.

10 Q. If he could see it in all probability and he got
11 hurt because he stood on the curb, why was it or was it
12 not his fault that he got hurt for parking there?

13 MR. HASSINGER: Objection, form.

14 A. Well, I don't -- again, as far as being hurt
15 because he stood on the curb, I don't know if I'd
16 necessarily agree with that assessment. More so, he was
17 standing on the curb because he lacked adequate space to
18 maneuver with -- between the car and the curb leading to
19 him standing on the curb in order to get his walker out
20 and open it up. So, it's really the lack of space that
21 would force somebody in that situation and even without a
22 disability, even myself, to maybe have to use the curb,
23 but it's -- for a disabled person it's even a more
24 dangerous situation.

25 Q. Why didn't -- would you characterize the danger

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1 to a disabled person that's posed by the curb and the
2 space between the car and the curb as obvious or
3 nonobvious to a normal person?

4 A. I would say that I wouldn't consider it obvious.
5 A lot of people don't recognize that until they're in the
6 process of actually having to try and maneuver between
7 the car and the curb. And then so you see an open
8 parking spot and you say, great, there's a parking spot
9 and you may not realize that, wow, when I get out, I
10 don't have much space to maneuver. So, I would not
11 consider it to be obvious.

12 Q. Well, if it's not obvious to a normal person,
13 why was it Alliance's responsibility to appreciate the
14 danger?

15 MR. HASSINGER: Objection, form.

16 A. Well, applying it to these particular
17 circumstances, I mean they knew that Mr. Aguilar had a
18 disability and that he relied on even the parking space
19 they gave him that was not adjacent to a curb on the
20 driver's side and, therefore, just enforces their
21 responsibility to provide notification of reasonable
22 alternatives if that space is going to be taken out of
23 service and not going to be available for his use.

24 Q. Why are we looking at ADA standards in this type
25 of a case?

1 A. Well, regardless of whether the enforcement
2 aspect of them, they are authoritative documents on the
3 subject matter from an accessibility standpoint, just the
4 same thing as the Texas Accessibility Standards, ANSI
5 A117.1. A lot of research has gone into the preparation
6 and production of those documents and so they are
7 authoritative resources on the subject matter, regardless
8 of whether some entity has the power to enforce them or
9 not. That would be a valid and reasonable source anybody
10 interested in that subject would rely upon.

11 Q. Are the ADA standards generally accepted as
12 authoritative in the community of safety engineers
13 regarding the specifications of handicapped
14 accommodation?

15 A. Yes.

16 MR. HASSINGER: Objection, form.

17 A. Yes.

18 Q. How would you characterize any distinction
19 between the ADA standard applicable to this incident and
20 the FHA and ANSI standard, if any?

21 MR. HASSINGER: Objection to form.

22 A. As far as characterizing their differences?

23 Q. Correct.

24 A. Well, the FHA --

25 MR. HASSINGER: Objection, form.

1 A. -- essentially references the ANSI for the
2 detailed design requirements for accessible spaces. ANSI
3 was actually in existence well before ADA was ever
4 developed in the early '90s. ANSI goes way back. I
5 think their first publication was 1960. And so AD -- the
6 Department of Justice actually took a lot of what ANSI
7 had already researched and developed and incorporated
8 that into the creation of the ADA as far as the design
9 guidelines. And then kind of the Texas Accessibility
10 Standards also kind of did the same thing, either taking
11 that information from ANSI or the ADA.

12 So, essentially on most all provisions
13 they're almost identical as far as what they require. As
14 far as actual content, there's not a whole lot of
15 difference between the three different resources.
16 They're very consistent.

17 Q. Would you accept the FHA as the code that is
18 quote, unquote code and directly applicable to the area
19 of the lot where the incident occurred?

20 A. Yes, that would be the code that could be
21 enforceable, meaning that if there was a complaint filed,
22 they would investigate and could actually force the
23 apartment to make changes or there could be some
24 penalties relative to that.

25 MR. HASSINGER: What code?

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1 MR. McALPINE: The FHA. It's -- that's the
2 quote, unquote code I guess if that makes sense. It's
3 the code that's -- anyway, I think he answered the
4 question.

5 Q. All right. So, after you read Mr. DiNicola's
6 report, did you do any additional research into FHA
7 requirements as applied here?

8 MR. HASSINGER: Objection. It's outside the
9 scope of his written report in this case. He has no
10 right to supplement and offer new opinions.

11 MR. McALPINE: He has no right? So, he's
12 not allowed to do any research on the subject matter
13 after he's received another report?

14 MR. HASSINGER: Not if he's going to issue
15 new opinions. He can't issue new opinions outside the
16 scope of his report. That's why we have reports. We're
17 in federal court.

18 MR. McALPINE: Let me see the documents.

19 A. Which ones, these?

20 Q. These ones. How would you summarize the
21 findings that you've made regarding what the FHA
22 required?

23 A. Well, I mean I spoke in my report as far as
24 compliance with ADA, TAS, and then more specifically the
25 ANSI A117.1. The FHA essentially refers you to the ANSI

1 happening.

2 Q. Why is the curb dangerous?

3 MR. HASSINGER: Objection, form.

4 A. Uh, primarily because it actually further limits
5 the space that you had to maneuver next to your vehicle
6 by -- and what I mean by that is that if, for example, he
7 had parked in the normal spot he utilizes, not only he
8 has the space that's between the line, the white line and
9 his vehicle, but he also has the spaces on the other side
10 of that white line that's not taken up by a vehicle in an
11 adjacent spot. So, you'd have more space to maneuver
12 versus in the space that he parked, that white line is
13 essentially the curb. So, you're now limited and have
14 less space to maneuver when you're -- without having to,
15 you know, deal with the curb, meaning either stand on the
16 curb or in the grass or go back and forth across it,
17 which is a much higher risk. So, there's essentially no
18 change of elevation if there's not the curb there in a
19 parking space such as what he normally would park in.

20 Q. Would that curb be dangerous to a regular
21 nonhandicapped person?

22 MR. HASSINGER: Objection, form.

23 A. It's a -- it's a higher risk than a parking
24 space without it because again there's -- you're having
25 to deal with an elevated surface and less room to

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1 document or others as the specifications for accessible
2 routes. And so I guess I just went straight to the
3 source that the FHA references. I was familiar with the
4 FHA before that. I did go back to look at a couple of
5 specific provisions that, uh, Mr. DiNicola referenced
6 after -- after I received his report just to verify a
7 couple of things including one of the figures that he,
8 uh, put in his report which in my opinion is incomplete
9 because he didn't put the whole figure in there.

10 Q. Is it true that the ANSI standards you
11 referenced in your report are incorporated by reference
12 into the FHA requirements including those directly cited
13 in Mr. DiNicola's report?

14 MR. HASSINGER: Objection, form.

15 A. Yes.

16 Q. In your assessment of the parking space
17 Mr. Aguilar used on the date in question -- well,
18 actually let me strike that question.

19 If Mr. Aguilar had access to the space that
20 he ordinarily used on the day in question, is it more
21 probable or less probable that the accident would have
22 happened as it did?

23 MR. HASSINGER: Objection, form.

24 A. If he had access to his normal spot, it would be
25 less probable that the accident happened as it ended up

1 maneuver getting in, but not to the degree that it is for
2 somebody with a mobility impairment or disability.

3 Q. For someone with mobility impairment is the
4 danger posed by the curb next to the spot Mr. Aguilar
5 parked in reasonable or unreasonable?

6 A. Unreasonable.

7 Q. And why is that?

8 MR. HASSINGER: Objection, form.

9 A. Well, somebody such as Mr. Aguilar who has a
10 disability or a mobility impairment and even more
11 importantly that has -- that is relying on a mobility
12 aide such as a walker, I would say it's unlikely the
13 walker would even fit between if he unfolded it and set
14 it down between the car and the curb. So, it's just not
15 enough space to be able to safely exit the vehicle and
16 obtain and actually utilize your mobility aide such as a
17 walker or wheelchair, scooter or whatever it may be to
18 safely exit or enter your car. So, it's just not enough
19 space in that situation.

20 MR. McALPINE: Pass the witness.

21 EXAMINATION

22 BY MR. HASSINGER:

23 Q. Mr. English, Mr. Aguilar never should have
24 parked in the parking space that he parked in on the day
25 of this incident, correct?

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1 A. I agree that it's not a safe parking space for
2 somebody and under those circumstances.

3 Q. And the only person who made a decision to park
4 in the parking space that he parked in was Mr. Aguilar,
5 true?

6 A. Uh, I would say in some aspects, yes, but also
7 sometimes decisions are dictated by the environment in
8 which you're presented. So ... So, I would say
9 ultimately did he make a decision? Yes. But if there
10 were not any viable safer alternatives, then it wasn't
11 really much of a decision to make.

12 Q. And you don't know whether there were viable
13 safer alternatives or not --

14 MR. McALPINE: Object to the form.

15 Q. -- do you?

16 MR. McALPINE: Object to the form.

17 A. All I can say is that I would say the evidence
18 points toward that there were not, but I can't go further
19 beyond what the evidence indicates.

20 Q. You don't know whether other parking spaces were
21 available without a curb to the left of the car, do you?

22 A. I can't speak to that 'cause I wasn't there at
23 the time.

24 Q. So, the answer is you don't know.

25 A. I don't know.

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1 Q. You don't know whether other handicapped parking
2 spaces were available for him to use or not, do you?

3 MR. McALPINE: Object to the form.

4 A. Based on his historical practice, I would say
5 likely not since he had utilized the one near the leasing
6 office before. Whether there was others throughout the
7 complex, I don't know one way or the other, but those
8 would be putting him at additional risk due to the length
9 of travel he'd have to go between the parking spaces and
10 his unit.

11 Q. And if -- and the parking space, the handicapped
12 parking space in front of the leasing office if we are to
13 look at Exhibit 5, photograph 16 (indicating), is
14 diagonally across from the handicapped parking space
15 where he normally parked.

16 MR. McALPINE: Object to the form.

17 A. I agree. Diagonally across the driveway, yes.

18 Q. So, it's reasonable for Alliance Residential to
19 assume that if the handicapped parking space where he
20 normally parked was being painted for a small period of
21 time, that there's another handicapped parking space
22 (indicating) diagonally across from the one being
23 painted, correct?

24 MR. McALPINE: Object to form.

25 A. You're asking it's reasonable for them to assume

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1 what?

2 Q. That there's another available handicapped
3 parking space diagonally across from the one he normally
4 parked.

5 A. Well, I guess physical I mean it is what it is.
6 There is a space there, but it's also Mr. Aguilar
7 testified that it's generally -- that that is not
8 supposed to -- that tenants are not supposed to park
9 there.

10 Q. There's no sign on that for that parking space
11 that says tenants shall not park there, is there?

12 A. No.

13 Q. There's nothing whatsoever as far as that
14 parking space by the leasing office is concerned that
15 whether tenants are told don't park in this parking
16 space, true?

17 A. Are you speaking from signage?

18 Q. Yes.

19 A. I did not see any signage that indicated that,
20 no.

21 Q. There's not a document you've seen in this case
22 that indicates that tenants aren't supposed to park in
23 this parking space in Exhibit 16, the handicapped parking
24 space in front of the leasing office, is there?

25 A. That would be through Mr. Aguilar's testimony as

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1 far as his understanding. And I will also say from my
2 experience it's not unusual that tenants are discouraged
3 from parking at the leasing office, whether it's the
4 handicapped parking or the other parking, because that's
5 intended for future tenants and visitors.

6 Q. There's no sign here that says visitor parking
7 only, is there?

8 A. I did not see any sign as to indicate that, no.

9 Q. So, back to my question, if the handicapped
10 parking space where he normally parked was being painted
11 temporarily, how long do you think it would take to paint
12 that parking space?

13 MR. McALPINE: Object to the form.

14 A. I don't know what methods that were being
15 utilized to do that. I'm sorry.

16 Q. How about a paint brush and a roller. How long
17 would it take to paint that parking space?

18 A. I can't answer that question. I can't give you
19 a specific time.

20 Q. You don't know one way or the other, do you?

21 A. It depends on -- I mean there's people that have
22 different methods and use different equipment. So, I --
23 I mean it depends on how it was being done.

24 Q. Less than an hour?

25 A. I don't have that information.

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1 Q. Less than an hour?

2 MR. McALPINE: Object to form.

3 A. I would say for a single parking space likely
4 less than an hour, but I can't give you a specific time.

5 Q. You don't know whether it would take 10 minutes,
6 30 minutes, or 45 minutes, do you?

7 MR. McALPINE: Object to the form.

8 A. In my opinion it would likely take more than 10
9 minutes which I think is also evidenced through the
10 incident reports that he had 10 minutes left and he was
11 only halfway done.

12 Q. So, 20 minutes at most?

13 MR. McALPINE: Object to the form.

14 A. Again, it could vary depending on the methods
15 utilized and who was doing it. So, I can't tell you how
16 long their particular maintenance person may have taken
17 to do it and I don't --

18 Q. Based on the evidence that you have in front of
19 you, which is all you have concerning the painting of
20 that parking space, it was going to be 20 minutes in
21 total to paint that parking space, right?

22 MR. McALPINE: Object to the form.

23 A. I can't agree or disagree to 20 minutes in total
24 'cause I don't know exactly what methods were being
25 utilized. I agree it's not going to be an extended

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1 length of time, but as far as pinning down it's going to
2 take this exact amount of time, I'm not here to testify
3 about that.

4 Q. I'm here to ask you about it 'cause that's all
5 you have and you have a statement or an incident report
6 that says he was halfway done and had 10 minutes more.
7 So, it would have taken 20 minutes according to the
8 evidence you have and you don't have anything else to the
9 contrary, do you?

10 MR. McALPINE: Object to the form.

11 A. Well, as far as being halfway done, that's based
12 on the photographs showing that it's half painted. The
13 incident report just said he had about 10 minutes left.

14 Q. Okay. So, if it's halfway painted and he had 10
15 minutes left, then it would have taken 20 minutes in
16 total to paint the parking space, correct?

17 A. You could -- that would be one assessment
18 possibly, yes.

19 Q. And 20 minutes to paint a handicapped parking
20 space is not an unreasonable period of time, is it?

21 MR. McALPINE: Object to the form.

22 A. It depends on the circumstances.

23 Q. I'm talking about these circumstances --

24 A. In my opinion --

25 Q. -- the circumstances in this particular case

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1 where 20 minutes to paint a handicapped parking space at
2 this particular apartment complex, that's not
3 unreasonable, is it?

4 A. Given the circumstances in this case in my
5 opinion, yes, it is.

6 Q. It was certainly reasonable for Alliance to
7 assume that if that parking space was being painted and
8 it would have only taken 20 minutes, that there's another
9 parking space, another handicapped parking space
10 diagonally across the way, true?

11 A. Well, there's no evidence in the record that
12 they made that assumption, one, but again, that's a space
13 that they knew Mr. Aguilar relied upon as far as
14 accessing his apartment for almost 10 years and I think
15 it's unreasonable to take that away. And this is a spot
16 that a known tenant routinely utilized versus just a
17 general spot that is available for anybody. And so,
18 therefore, without providing any notification that this
19 is going to occur or trying to schedule it when he's not
20 going to be there, which would be very reasonable in my
21 opinion, given the entire circumstances with this
22 situation, I believe even the 20 minutes taking it out of
23 service was unnecessary and unreasonable.

24 Q. You don't know anything about what Alliance knew
25 or didn't know, do you?

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1 MR. McALPINE: Object to the form.

2 A. Not at this time. And as I stated in my report
3 if they -- I don't know if they're going to be giving
4 deposition testimony or not, but I reserve the right to
5 alter my opinions based on new evidence that comes to
6 light including additional testimony.

7 Q. You don't have that right and you didn't ask for
8 any testimony from Alliance before you issued a report,
9 did you?

10 MR. McALPINE: Object to the form. He
11 doesn't do that. I did that. And this is harassing.

12 MR. HASSINGER: It's not harassing.

13 MR. McALPINE: Yes, it is.

14 MR. HASSINGER: I'm asking him a question
15 about what he asked for before he issued opinions in this
16 case.

17 MR. McALPINE: It's not his role to do that.

18 MR. HASSINGER: You never --

19 MR. McALPINE: It's an improper question.

20 MR. HASSINGER: You never requested -- your
21 testimony is improper. If you have an objection, please
22 state it.

23 Q. You didn't ask that anyone from Alliance be
24 deposed or statements be obtained before you issued your
25 opinions in Exhibit 1, true?

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MR. McALPINE: Object to the form.

A. I did ask if there was any representatives from the apartment complex that had been deposed and the answer was, no, I don't have the right to schedule depositions or even to -- to call the apartment manager on the phone and start asking her questions considering this is in litigation. So -- but I do have the right as new information becomes available to evaluate that information and alter my opinions, if necessary. So, I don't know where you get the right -- where you get the opinion that I don't have that right 'cause that is a right as a Professional Engineer for me to alter my opinions as new information becomes available.

Q. There's nothing in your report -- well, let me back up. You didn't believe you had the right to actually contact anyone from Alliance talk to them, but you believe you had the right to actually go over to their location and conduct an inspection without anyone present from Alliance or without Alliance being notified?

MR. McALPINE: Object to the form.

A. Well, first of all, I didn't know who was or was not going to be there. I was -- my client scheduled with me to meet at the site at a particular time. I'm not responsible for scheduling with other parties. I'm not an attorney in this case. So, that's what I did.

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Q. There's nothing in your report -- in any of your opinions in your report about any economic burden issues, is there?

A. I don't think I used those terms, no.

Q. There's nothing in your report as far as your expert opinions are concerned pertaining to anything having to do with a second safest option, is there?

A. I did not use those terms, no.

Q. There's nothing in your report as far as your expert opinions are concerned pertaining to anything being a needless danger to the public, is there?

A. I did not use those terms, no.

Q. You're certainly not here today to tell us that Mr. Aguilar has no fault in connection with what happened, are you?

MR. McALPINE: Object to the form.

A. If asked, I would offer my opinions.

Q. Would you agree with me that Mr. Aguilar has a certain level of responsibility with respect to what happened in this case for the decisions that he made?

A. Uh, the same as others in those -- presented with those same circumstances, yes.

MR. McALPINE: Object to the responsiveness.

Q. Okay. Just for clarity, do you agree with me that Mr. Aguilar is at fault in connection with the

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accident in this case?

A. I don't view that he viewed anything -- did anything unreasonable relative to this incident, no.

Q. And your expert opinion under oath today is that Mr. Aguilar's decision to park in a nonhandicapped parking space instead of talking to the contractor to ask him how long he was going to be, that that wasn't unreasonable?

MR. McALPINE: Object to the form.

A. I don't feel like given the situation he was presented that his actions were unreasonable, no.

Q. And your testimony today under oath is that Mr. Aguilar wasn't unreasonable for parking in a nonhandicapped parking space with a curb to the left of it when other parking spaces were available.

A. Well, first of all, there's no evidence that other parking spaces were available. And to the contrary, Mr. Aguilar said that it's typical practice if the one he normally parks in is not available is that he would utilize the one at the leasing office and, therefore, likely it was not available on this particular date.

Q. Well, that's not what he said. I know that's what you read into it.

MR. McALPINE: Object to the side bar.

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Q. But he ultimately testified that he didn't know, right?

MR. McALPINE: Object to the form.

A. Yeah, three years after the fact he said he didn't recall. That's correct.

Q. And in your report on page three concerning your synopsis of the injury event, you don't mention anything about the curb causing him to fall, do you?

A. He mentioned (witness reading) -- I'd speak to the narrowness of the parking space and the limited space between his vehicle and the curb. And again, that pretty clear section is speaking to my general understanding of what happened and the conditions present.

Q. And to the best of your knowledge, the reason he lost his balance is because he lost his grasp of the walker quote, unquote, lost his grasp of the walker.

A. As far as the reasoning why he lost his balance, not necessarily, but as far as my understanding based on the information I had at that time is, yes, he was in the process of trying to remove the walker from his car and lost his grasp.

Q. And what you have on page three is that Mr. Aguilar lost his grasp of the walker causing him to lose his balance. Did I read that correctly?

A. Yes.

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1 Q. Okay. Thank you, Mr. English. I appreciate all
2 your time --

3 MR. McALPINE: I have one more question.

4 Q. -- today. Thank you. I have no more --

5 MR. McALPINE: I have one more question.
6 Sorry. Can I see Exhibit 5?

7 EXAMINATION

8 BY MR. McALPINE:

9 Q. All right. Did you take what's been marked as
10 No. 10, photograph 10 from Exhibit 5?

11 A. Yes.

12 Q. And do you see a fire hydrant (pointing)?

13 A. Yes.

14 Q. And what appears to be directly across from that
15 fire hydrant, is that the space that in your
16 understanding Mr. Aguilar parked in on the day he was
17 injured?

18 MR. HASSINGER: Objection, leading.

19 A. Yes.

20 Q. (Pointing) The space -- where is the leasing
21 office space located in relation to the space that you
22 just identified?

23 A. It's across a parking -- what I would refer to
24 as a parking lot island to the left of that space as
25 shown in that photograph. So, it's to the -- across a

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1 grassy kind of median area.

2 Q. Does anything impair one's visibility of the
3 leasing office space from the space we previously
4 identified?

5 A. Uh, primarily just vegetation.

6 Q. And in all reasonable probability, he would
7 have -- is it true or not true that he would have been
8 able to see whether there was another vehicle in the
9 leasing office handicapped spot?

10 MR. HASSINGER: Objection, form.

11 A. It would be clearly visible. I mean there's
12 not -- it's a tree, but it's a trunk as far as that
13 aspect of it. So, yes, it would be visible.

14 MR. McALPINE: Nothing further. Reserve
15 remaining questions.

16 MR. HASSINGER: Thank you very much.

17 THE WITNESS: You're welcome.

18 MR. HASSINGER: Thank you. Sorry to leave
19 quickly, but I appreciate all your time.

20 MR. McALPINE: Hey, no problem.
21 (Deposition concluded at 2:13 p.m.)
22 (Signature waived.)
23
24
25

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 GUSTAVO AGUILAR §
5 Plaintiff §

6 V. § Case No. 4:16-cv-00118
7 §

8 ALLIANCE RESIDENTIAL, §
9 LLC §
10 Defendant §

11 ORAL DEPOSITION

12 OF

13 JASON T. ENGLISH, M.S., CSP, P.E.

14 FEBRUARY 3, 2017

15 VOLUME 1 OF 1

16 I, Camille A. Bruess, Certified Shorthand
17 Reporter in and for the State of Texas and Registered
18 Professional Reporter, hereby certify to the following:
19 That the witness, JASON T. ENGLISH, M.S., CSP,
20 P.E., was duly sworn by the officer and that the
21 transcript of the oral deposition is a true record of the
22 testimony given by the witness;
23 I further certify that pursuant to FRCP Rule
24 30(f)(1) that the signature of the deponent:
25 _____ was requested by the deponent or a party
before the completion of the deposition and _____ was or
_____ was not returned within 30 days from date of

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1 receipt of the transcript. If returned, the attached
2 Changes and Signature Page contains any changes and the
3 reasons therefor:

4 X was not requested by the deponent or a
5 party before the completion of the deposition.

6 I further certify that I am neither attorney nor
7 counsel for, related to, nor employed by any of the
8 parties in the action in which this testimony was taken.

9 Further, I am not a relative or employee of any
10 attorney of record in this cause, nor am I financially or
11 otherwise interested in the outcome of the action.

12 Subscribed and sworn to on this 13th day of
13 February, 2017.
14

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